



CITY OF BUFFALO
DEPARTMENT OF LAW

EXHIBIT

J

ORIGINAL

**VIDEO DEPOSITION
KYLE T. MORIARTY**

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

JAMES C. KISTNER,

Plaintiff,

- vs - Civil Action No.
18-cv-402

THE CITY OF BUFFALO,
c/o Corporation Counsel,
BYRON LOCKWOOD, individually and in
his capacity as Police Commissioner
of the Buffalo Police Department,
DANIEL DERENDA, individually and in his
capacity as Police Commissioner of the
Buffalo Police Department,
LAUREN McDERMOTT, individually and
in her capacity as a Buffalo Police Officer,
JENNY VELEZ, individually and in her
capacity as a Buffalo Police Officer,
KARL SCHULZ, individually and in his
capacity as a Buffalo Police Officer,
KYLE MORIARTY, individually and in his
capacity as a Buffalo Police Officer,
DAVID T. SANTANA, individually and in his
capacity as a Buffalo Police Officer,
JOHN DOE(S), individually and in his/their
capacity as a Buffalo Police Officer(s),

Defendants.

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MAR 06 2020

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1 Video deposition of KYLE T. MORIARITY,
2 Defendant, taken pursuant to the Federal Rules of
3 Civil Procedure, in the offices of JACK W. HUNT &
4 ASSOCIATES, INC., 1120 Liberty Building, Buffalo,
5 New York, on February 21, 2020, commencing at
6 10:09 a.m., before ANNE T. BARONE, RPR, Notary
7 Public.

8
9 APPEARANCES: RUPP BAASE
10 PFALZGRAF & CUNNINGHAM, LLC,
11 By CHAD DAVENPORT, ESQ.,
12 1600 Liberty Building,
13 Buffalo, New York 14202,
(716) 854-3400,
davenport@ruppbaase.com,
Appearing for the Plaintiff.

14 TIMOTHY A. BALL, ESQ.,
15 Corporation Counsel,
16 By MAEVE E. HUGGINS, ESQ.,
17 Assistant Corporation Counsel,
18 1137 City Hall,
Buffalo, New York 14202,
(716) 851-4334,
mhuggins@city-buffalo.com,
Appearing for the Defendants.

19 PRESENT: JAMES KISTNER
20
21 NOLAN HALE, Rupp Baase
Pfalzgraf & Cunningham, LLC
22
23 TIMOTHY M. HUNT, CLVS, Videographer

09:43:42

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10:07:53 1 THE REPORTER: Read and sign?

10:07:56 2 MS. HUGGINS: 45 days, please.

10:07:57 3 THE REPORTER: And Ms. Huggins will be
10:08:00 4 supplied?

10:08:00 5 MR. DAVENPORT: Yes.

10:08:01 6 THE REPORTER: Thank you.

10:08:01 7

10:09:53 8 K Y L E T. M O R I A R I T Y, 695 Main Street,
10:10:06 9 Buffalo, New York, after being duly called and
10:10:06 10 sworn, testified as follows:

10:10:11 11

10:10:11 12 EXAMINATION BY MR. DAVENPORT:

10:10:11 13

10:10:15 14 Q. Good morning, Mr. Moriarity.

10:10:16 15 A. Good morning.

10:10:16 16 Q. My name is Chad Davenport. I'm an
10:10:18 17 attorney with Rupp Baase Pfalzgraf & Cunningham,
10:10:21 18 representing the plaintiff.

10:10:23 19 So we're here today to discuss a -- an
10:10:26 20 incident that happened on January 1st, 2017.

10:10:29 21 Before we start, I just want to explain
10:10:31 22 a few of the ground rules for this deposition.

10:10:33 23 So our discussion today is being transcribed

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10:10:38 1 by a stenographer. In order to have an accurate
10:10:40 2 testimony here today and an accurate record of that
10:10:43 3 testimony, I'm going to ask that you wait until
10:10:45 4 I finish any question before giving your answer.
10:10:49 5 Can you do that for me?

10:10:51 6 A. Yeah. Yeah.

10:10:51 7 Q. So, in addition, I just want to make
10:10:53 8 sure that you use verbal responses for each of the
10:10:58 9 questions that I ask of you. Head nods, shaking of
10:11:00 10 the head, neither of those will be able to appear
10:11:02 11 on our transcript, so I'm going to ask that you
10:11:05 12 respond to each question verbally. Can you do that
10:11:08 13 for me?

10:11:08 14 A. Yes.

10:11:10 15 Q. Thank you.

10:11:10 16 And if any time you don't understand
10:11:13 17 a question, if you want me to rephrase it, simply
10:11:17 18 ask me and I'm more than happy to do so. Can you
10:11:19 19 do that for me?

10:11:20 20 A. Yes.

10:11:21 21 Q. And if at any time you need to take --
10:11:23 22 take a break, you're more than welcome to. Just
10:11:26 23 let me know, let the court reporter know, and we

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10:11:29 1 can take that break for you.

10:11:30 2 A. Okay.

10:11:31 3 Q. Have you taken any drugs or alcohol
10:11:33 4 that would affect your testimony here today --

10:11:35 5 A. No.

10:11:36 6 Q. -- within the last 24 hours?

10:11:37 7 A. Sorry. No.

10:11:39 8 Q. Thank you.

10:11:40 9 Where were you born?

10:11:44 10 A. Here in Buffalo.

10:11:46 11 Q. Okay. Where do you live currently?

10:11:49 12 MS. HUGGINS: Well, form, and I would
10:11:52 13 object. He is an active duty police officer. He's
10:11:54 14 given a business address. He's currently employed
10:11:57 15 by the City of Buffalo.

10:11:58 16 MR. DAVENPORT: We're also suing them in
10:11:59 17 their individual capacity, so that means we would
10:12:02 18 have to know where their residence is as well. You
10:12:04 19 can put your objections on the record.

10:12:06 20 But you may answer. You can answer.

10:12:08 21 MS. HUGGINS: What I would -- what I would
10:12:11 22 propose to counsel is I would provide that
10:12:13 23 information, not in the form of a video deposition,

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10:12:17 1 but I --

10:12:17 2 BY MR. DAVENPORT:

10:12:17 3 Q. You can answer.

10:12:17 4 MS. HUGGINS: -- would provide that.

10:12:19 5 MR. DAVENPORT: You don't have to -- you

10:12:20 6 can't tell him to not answer that question. He can

10:12:22 7 answer that question. You can't direct him to not

10:12:25 8 answer the question.

10:12:25 9 You may answer the question.

10:12:27 10 MS. HUGGINS: Counsel, I -- I've indicated

10:12:28 11 I would provide that information to you but in --

10:12:28 12 MR. DAVENPORT: I understand that you will

10:12:30 13 provide --

10:12:30 14 MS. HUGGINS: -- another form.

10:12:31 15 MR. DAVENPORT: -- that information in

10:12:33 16 another form, but he can answer that question, and

10:12:35 17 you cannot direct him to not answer that question.

10:12:37 18 You may answer the question.

10:12:40 19 You cannot direct him to not answer the

10:12:43 20 question.

10:12:43 21 You may answer the question.

10:12:45 22 THE WITNESS: I'll keep it as 695 Main Street.

10:12:48 23 BY MR. DAVENPORT:

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10:12:48 1 Q. Is that here in Buffalo?

10:12:49 2 A. Yes.

10:12:51 3 Q. Have you served in the military?

10:12:53 4 A. Yes.

10:12:54 5 Q. Were you honorably discharged?

10:12:57 6 A. Yes.

10:12:58 7 Q. Do you have any criminal convictions?

10:13:01 8 A. No.

10:13:03 9 Q. What is your highest level of

10:13:05 10 education?

10:13:06 11 A. College. Associate's degree.

10:13:09 12 Q. And what was that associate's degree

10:13:11 13 in?

10:13:11 14 A. Criminal justice.

10:13:13 15 Q. So did you go -- did you go for your

10:13:16 16 associate's degree before or after the military?

10:13:18 17 A. After.

10:13:19 18 Q. And what years did you go for education

10:13:23 19 for your associate's degree?

10:13:24 20 A. 2014 -- or I'm sorry. 2012, 2014.

10:13:29 21 Q. And then did you go into police academy

10:13:33 22 training immediately after?

10:13:35 23 A. I went in 2015. January 2015.

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10:13:41 1 Q. So what did you do between 2014 to
10:13:45 2 2015?

10:13:45 3 A. Side jobs.

10:13:48 4 Q. Did you have a plan, after your
10:13:51 5 associate's degree, to become a police officer?

10:13:52 6 A. Yes.

10:13:53 7 Q. Where did you want to serve?
10:13:57 8 Did you have any municipality that you
10:13:59 9 wished to go to?

10:14:00 10 A. Buffalo.

10:14:01 11 Q. City of Buffalo?

10:14:02 12 A. Yeah.

10:14:02 13 Q. Did you take any training as part of
10:14:04 14 your ECC courses?

10:14:08 15 A. What do you mean by that?

10:14:09 16 Q. So with Erie County, you did some
10:14:11 17 training before you were able to enter as a city
10:14:15 18 police -- Buffalo police officer, correct?

10:14:17 19 MS. HUGGINS: Form. You can answer.

10:14:18 20 THE WITNESS: Yeah. As a pre-employment.
10:14:20 21 I paid -- paid my way through academy before I was
10:14:23 22 hired.

10:14:23 23 BY MR. DAVENPORT:

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10:14:23 1 Q. Okay. And so you started in 2015?

10:14:26 2 A. 2015, yeah.

10:14:27 3 Q. And how long did that last for? How
10:14:29 4 long was the training?

10:14:30 5 A. Six months.

10:14:30 6 Q. Six months? Okay.

10:14:32 7 So would that have been in 2016 that you
10:14:35 8 completed that training?

10:14:36 9 A. No. It was 2015.

10:14:37 10 Q. End of 2015?

10:14:39 11 Do you remember roughly what month that was?

10:14:41 12 A. January to June.

10:14:42 13 Q. Okay. So did you immediately start
10:14:50 14 working in the City of Buffalo as a police officer?

10:14:52 15 A. No. The exam -- the exam was given
10:14:58 16 three or four months after I completed academy.

10:15:01 17 Q. Okay.

10:15:01 18 A. And then I waited on the list and
10:15:04 19 waited to get hired.

10:15:05 20 Q. Okay. So when would that have been
10:15:08 21 that you had been hired?

10:15:10 22 A. November 4th of 2016.

10:15:12 23 Q. Of 2016?

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10:15:13 1 A. Yeah.

10:15:13 2 Q. Okay. So was there an interim in between
10:15:17 3 when you finished your training and before you were
10:15:20 4 hired?

10:15:21 5 Because I -- I think you said that at the
10:15:22 6 end of 2015 was when you completed that training,
10:15:25 7 correct?

10:15:25 8 A. I completed -- I completed academy in
10:15:28 9 2015.

10:15:29 10 Q. Okay.

10:15:29 11 A. June. Got hired November 4th of 2016.
10:15:35 12 Was sent back to Erie Community College for the
10:15:39 13 rest of phase 2 for academy. So firearms, there
10:15:44 14 was some more like motor vehicle stuff. There was
10:15:48 15 some other terrorism classes.

10:15:50 16 And then I came back to the Buffalo Police
10:15:54 17 unit's academy, where I went through policy
10:15:57 18 training, and I was done with that in late
10:16:02 19 December.

10:16:03 20 Q. Okay. So there's two phases then to
10:16:08 21 your training with --

10:16:10 22 A. There's two phases --

10:16:11 23 Q. Okay.

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10:16:12 1 A. -- through -- through a police academy,
10:16:16 2 yeah.

10:16:16 3 Q. Okay. So what would the first phase
10:16:18 4 consist of?

10:16:18 5 A. Article 35, penal law, drug recognition,
10:16:24 6 EVOC training, so like motor, driving stuff.

10:16:26 7 Q. Okay. And then what would the second
10:16:29 8 phase consist of?

10:16:30 9 A. Firearms. I believe there was
10:16:32 10 a terrorism class in there. There might have been
10:16:38 11 like an explosive class in there.

10:16:41 12 Q. Okay. So do you have to pass the first
10:16:44 13 phase in order to make it to the second phase, or
10:16:47 14 does everybody who enters the academy move on to
10:16:49 15 the second phase?

10:16:49 16 MS. HUGGINS: Well, form. Do you mean for
10:16:52 17 this officer in particular, his academy experience,
10:16:56 18 or in general?

10:16:57 19 MR. DAVENPORT: I'm just asking him
10:16:58 20 a general question.

10:16:59 21 MS. HUGGINS: Okay.

10:17:00 22 THE WITNESS: You have to pass every event
10:17:04 23 daily as they -- as they come through to move on to

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10:17:06 1 the next. But, yeah, you would have to pass

10:17:09 2 phase 1 to go to phase 2.

10:17:11 3 BY MR. DAVENPORT:

10:17:11 4 Q. Okay. And so you passed phase 1?

10:17:13 5 A. Yeah.

10:17:13 6 Q. Okay. So you ended phase 1 I believe
10:17:16 7 at the end of 2015, and then did you begin phase 2
10:17:20 8 during 2016? Is that how that worked?

10:17:22 9 A. So I -- I ended phase 1 in June of
10:17:27 10 2015, was hired in November 4th of 2016, completed
10:17:33 11 phase 2 by middle of December --

10:17:37 12 Q. Okay.

10:17:38 13 A. -- 2016.

10:17:40 14 Q. So you -- you wait until after you're
10:17:42 15 hired then before you begin phase 2?

10:17:43 16 A. I have to be hired to do phase 2.

10:17:46 17 Q. Okay. Okay. So from 2015, when you
10:17:51 18 completed phase 1, to beginning phase 2, did you
10:17:52 19 work at all with any City of Buffalo departments?

10:17:56 20 A. No. I entered my first semester at
10:18:00 21 Buff State, which I did not complete.

10:18:02 22 Q. Okay. And what were you going for?

10:18:04 23 A. Criminal justice.

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10:18:06 1 Q. It was criminal justice?

10:18:07 2 Would that be -- have been beyond your
10:18:10 3 associate's degree?

10:18:10 4 A. Yes.

10:18:10 5 Q. Okay. So, now, after you completed
10:18:15 6 phase 2, did you begin any training with the City
10:18:18 7 of Buffalo Police Department?

10:18:18 8 A. Yes.

10:18:22 9 Q. And what kind of training did you do
10:18:24 10 for that?

10:18:24 11 A. I did additional driving training.
10:18:31 12 I did some policy training.

10:18:39 13 I'm un -- I'm unsure of what else was on
10:18:42 14 that training.

10:18:45 15 Q. Now, would you have done --

10:18:46 16 A. Yeah, I don't remember.

10:18:47 17 Q. I'm sorry.

10:18:49 18 Would you have done that training before you
10:18:50 19 actually entered a patrol car, or would that
10:18:53 20 training have been done concurrently with some
10:18:55 21 training -- field training that you would have
10:18:58 22 received?

10:18:58 23 A. This would have been --

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10:18:59 1 MS. HUGGINS: Form. You can answer.

10:19:00 2 THE WITNESS: This would have been before.

10:19:02 3 BY MR. DAVENPORT:

10:19:02 4 Q. Okay. Did you have to complete any

10:19:04 5 courses administered by the Buffalo Police

10:19:07 6 Department before you were able to enter the field

10:19:10 7 training portion?

10:19:10 8 A. The training that I'm referring to,

10:19:12 9 yes.

10:19:13 10 MR. DAVENPORT: Okay. So I'm -- I have --

10:19:16 11 I'm not really sure what exhibit we're on at this

10:19:24 12 point. I believe, I want to say, 24, but I'm not

10:19:27 13 a hundred percent sure.

10:19:28 14 THE REPORTER: 22.

10:19:29 15 MR. DAVENPORT: 22? Okay.

10:19:30 16 So I'll have this marked as Exhibit 22.

17 The following was marked for Identification:

18 EXH. 22 Buffalo Police Academy

19 training record, two pages

20 BY MR. DAVENPORT:

10:20:06 21 Q. Sir, I'm showing -- showing you what's

10:20:08 22 been marked as Exhibit 22. Do you recognize this

10:20:10 23 document?

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10:20:10 1 A. Yes.

10:20:10 2 Q. And what do you recognize it to be?

10:20:12 3 A. This is a list of academy training that
10:20:14 4 I did with the BPD.

10:20:16 5 Q. And would you -- reading through the
10:20:19 6 document very quickly, would you agree that it
10:20:21 7 shows all courses that you've taken with the
10:20:24 8 Buffalo Police Department?

10:20:25 9 A. Up to date, yes.

10:20:31 10 Q. So now starting with the first one,
10:20:33 11 drug test policy, that was administered November 4th,
10:20:35 12 2016, to the same day, November 4th, 2016.

10:20:39 13 Was that drug test administered to you
10:20:41 14 before you started your field training?

10:20:43 15 MS. HUGGINS: Form.

10:20:45 16 THE WITNESS: No. That was -- if it -- if
10:20:47 17 it says that it's on there that day, that's --
10:20:49 18 that's the date that I did it.

10:20:51 19 BY MR. DAVENPORT:

10:20:51 20 Q. Okay.

10:20:52 21 A. Because I would -- I would have signed
10:20:53 22 something.

10:20:54 23 Q. Okay. So you also did, on the same

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10:20:58 1 day, EAP training. What would that refer to?

10:21:02 2 A. I don't know what EAP training is.

10:21:06 3 Q. Okay. What about rules and

10:21:08 4 regulations? That was also on the same day.

10:21:10 5 A. Yeah, I did that then.

10:21:11 6 Q. What would that refer to?

10:21:13 7 A. You're probably going over MOP stuff.

10:21:17 8 BPD's like operational handbook. Your uniform

10:21:23 9 regulations. Rules of wearing certain things or

10:21:29 10 speaking to, you know, a lieutenant a certain way.

10:21:35 11 That -- that type of stuff.

10:21:36 12 Q. Do you remember any specific sections

10:21:38 13 that they went over for the MOP?

10:21:42 14 And that would be referring to the

10:21:44 15 procedures -- policies and procedures.

10:21:45 16 A. The handbook, yeah.

10:21:46 17 Q. Okay.

10:21:48 18 A. No, I wouldn't remember.

10:21:49 19 Q. Okay. Did they discuss at all, you

10:21:51 20 know, how to arrest individuals?

10:21:55 21 Did they go over certain procedures for

10:21:58 22 accidents with patrol vehicles or --

10:22:00 23 MS. HUGGINS: Form. You can answer.

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10:22:01 1 THE WITNESS: It's -- it's in there.

10:22:03 2 I don't remember what we did that day.

10:22:06 3 BY MR. DAVENPORT:

10:22:06 4 Q. Okay. So you also did sexual harassment,
10:22:11 5 discrimination in the workplace. I would assume
10:22:14 6 that we all know what that is.

10:22:16 7 Rules and regulations, chapter 3, general
10:22:18 8 conduct. What does general conduct refer to in the
10:22:23 9 procedure -- policies and procedures handbook?

10:22:26 10 A. I'd have to -- I'd have to open up a --
10:22:30 11 open up the handbook.

10:22:32 12 Q. When they were going through these
10:22:34 13 sections in the handbook, did they go through the
10:22:36 14 individual sections of the handbook?

10:22:38 15 Did they go through what those provisions
10:22:40 16 said?

10:22:40 17 MS. HUGGINS: Form.

10:22:41 18 THE WITNESS: They briefly skimmed over
10:22:43 19 them, so I -- I'm -- I honestly don't know. Or
10:22:47 20 don't remember. I'm sorry.

10:22:48 21 BY MR. DAVENPORT:

10:22:48 22 Q. Did they ask if you understood what
10:22:50 23 those sections meant?

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10:22:53 1 MS. HUGGINS: Form. You can answer.

10:22:56 2 THE WITNESS: It's a long time ago. I -- I
10:22:58 3 don't remember. I'm -- I'm sorry.

10:22:59 4 BY MR. DAVENPORT:

10:23:00 5 Q. So, now, on November 23rd, you did
10:23:03 6 MOP 1 training.

10:23:05 7 A. Yep.

10:23:06 8 Q. Do you know what that refers to?

10:23:09 9 A. More MOP training on the -- on the
10:23:14 10 procedural handbook.

10:23:15 11 Q. So that's procedural handbook training?

10:23:17 12 A. Yeah.

10:23:17 13 Q. Okay. So now it's 1. Does that refer
10:23:20 14 to the first phase?

10:23:24 15 MS. HUGGINS: Form.

10:23:25 16 THE WITNESS: Maybe it's chapter 1. I'm --
10:23:29 17 I'm really un -- unsure of what --

10:23:33 18 BY MR. DAVENPORT:

10:23:33 19 Q. But this would have all been training
10:23:35 20 that you would have had to complete before -- or
10:23:37 21 while concurrently you were doing your field
10:23:39 22 training exercises; is that correct?

10:23:40 23 A. This was done prior to field training.

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10:23:42 1 Q. Okay. So, now, at what point do you
10:23:46 2 actually enter in and begin field training?

10:23:49 3 Was there a certain course that you needed
10:23:51 4 to complete on this training course outline before
10:23:54 5 you could actually enter the field?

10:24:13 6 A. It looks like there's going to be
10:24:14 7 a break between December 1st and December 29th,
10:24:19 8 where I went to phase 2.

10:24:24 9 Q. So this would have been --

10:24:26 10 A. And completed my --

10:24:28 11 Q. This would have been phase 2 of the
10:24:31 12 field training with the Buffalo Police Department,
10:24:33 13 correct?

10:24:33 14 MS. HUGGINS: Form.

10:24:34 15 THE WITNESS: I'm sorry. I'm going to be
10:24:37 16 completing phase 2 right through here.

10:24:39 17 BY MR. DAVENPORT:

10:24:39 18 Q. Okay.

10:24:39 19 A. During -- during the --

10:24:40 20 Q. So from November 4th to --

10:24:43 21 A. To the 23rd.

10:24:44 22 Q. Okay.

10:24:44 23 A. And then --

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10:24:46 1 Q. You would have been completing phase 2
10:24:47 2 at that point?

10:24:48 3 A. Yeah, I would have been completing
10:24:49 4 phase 2 then, and then between December 1st and
10:24:54 5 December 29th -- I don't know. I wasn't in
10:25:03 6 a vehicle yet because I was waiting for a vest up
10:25:05 7 in the camera room.

10:25:09 8 Q. Okay. So what would phase 1 have
10:25:11 9 consisted of?

10:25:12 10 Would it just be these training courses that
10:25:14 11 are listed on your training course outline?

10:25:15 12 MS. HUGGINS: Form.

10:25:16 13 THE WITNESS: Phase 1 of academy?

10:25:18 14 BY MR. DAVENPORT:

10:25:18 15 Q. Well, it would have been phase 1 of
10:25:20 16 your Buffalo Police Department field training,
10:25:22 17 correct?

10:25:24 18 MS. HUGGINS: Form.

10:25:26 19 BY MR. DAVENPORT:

10:25:26 20 Q. Because I -- I guess what you're saying
10:25:28 21 is that phase 2 was completed and you began your
10:25:31 22 field training on November 23rd, correct?

10:25:33 23 A. Yeah. Yeah.

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10:25:34 1 Q. Was there a phase 1 specifically just
10:25:36 2 for --

10:25:36 3 A. They didn't --

10:25:36 4 Q. -- the police department?

10:25:36 5 A. They didn't -- no. They didn't -- they
10:25:39 6 didn't call it anything like that.

10:25:40 7 We just went straight from phase 2 of police
10:25:43 8 academy, straight to the academy unit at -- at
10:25:46 9 headquarters, and we just sat in there and got all
10:25:49 10 these classes.

10:25:50 11 Q. Okay. So it would have been phase 2 at
10:25:58 12 the Erie County Academy and --

10:25:58 13 A. Yeah. Yeah.

10:25:59 14 Q. -- then phase 2 --

10:25:59 15 THE REPORTER: Hold on. Hold on.

10:25:59 16 THE WITNESS: Sorry.

10:25:59 17 (Discussion off the record.)

10:25:59 18 BY MR. DAVENPORT:

10:26:00 19 Q. Okay. So it would have been phase 2 at
10:26:00 20 the Erie County academy, and then you would have
10:26:00 21 immediately gone into phase 2 at the Buffalo
10:26:03 22 academy?

10:26:03 23 A. Yeah.

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10:26:03 1 Q. Okay. So there's no phase 1 at the
10:26:06 2 Buffalo --

10:26:06 3 A. No.

10:26:07 4 Q. -- training academy? Okay.

10:26:09 5 So now phase 2, is there a mix of actually
10:26:13 6 being out in the field, as well as classroom
10:26:16 7 training, or was it just limited to classroom
10:26:19 8 training at that point?

10:26:20 9 A. Not -- they're not concurrent. It's
10:26:23 10 just classroom training, then we were waiting for
10:26:27 11 our gear up in the camera room, and then once we
10:26:31 12 got our gear, then we went to field training.

10:26:33 13 Q. Besides the security vest, was there
10:26:36 14 any other equipment that you needed at that time?

10:26:38 15 A. That was the only thing I was waiting
10:26:40 16 on.

10:26:40 17 Q. Okay. What other -- other equipment do
10:26:45 18 they give you as a field training officer?

10:26:47 19 A. Your duty belt and your -- your
10:26:49 20 assignment room.

10:26:51 21 MS. HUGGINS: Just slow down too.

10:26:53 22 THE WITNESS: Okay.

10:26:53 23 MS. HUGGINS: You're speaking fast.

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10:26:56 1 BY MR. DAVENPORT:

10:26:57 2 Q. So now this vest that they gave to you,
10:26:59 3 were you wearing that immediately when you went out
10:27:01 4 into the field?

10:27:01 5 A. Yes.

10:27:02 6 Q. And when did you receive that again?

10:27:07 7 A. I don't remember.

10:27:08 8 Q. Would it have been between November --
10:27:09 9 or December 1st of 2016 and December 29th of 2016?

10:27:14 10 A. Yeah. Closer to the 29th.

10:27:16 11 Q. Closer to the 29th?

10:27:18 12 So what were you doing from December 1st of
10:27:20 13 2016 to December 29th of 2016?

10:27:24 14 A. Sitting around at headquarters and then
10:27:26 15 sitting around in the camera room at headquarters.

10:27:30 16 Q. Okay. What kinds of things would they
10:27:34 17 have you doing when you were sitting there?

10:27:38 18 A. In the camera room, observing city
10:27:41 19 camera locations and just writing things down of
10:27:43 20 what we were observing.

10:27:47 21 Q. So you would have been observing city
10:27:49 22 cameras. Where would those cameras typically be
10:27:53 23 located?

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10:27:53 1 A. All over. All over the city.

10:27:56 2 Intersections.

10:27:56 3 Q. Would -- would they be located in -- so
10:27:58 4 you -- you eventually went to C District, correct?

10:28:01 5 A. Yes.

10:28:01 6 Q. Would some of those cameras be located
10:28:03 7 in C District?

10:28:04 8 A. Yes.

10:28:04 9 Q. Did they have you exclusively looking
10:28:06 10 at those cameras at C District?

10:28:07 11 A. No.

10:28:08 12 Q. They would have been in A District,
10:28:09 13 B District, C District?

10:28:11 14 MS. HUGGINS: She needs a verbal answer.

10:28:13 15 THE WITNESS: Yes. I'm sorry. Yes.

10:28:15 16 BY MR. DAVENPORT:

10:28:15 17 Q. So were you there, looking at these
10:28:18 18 cameras, with any other lieutenants or other field
10:28:22 19 training -- or other police officers who were out
10:28:25 20 in the field?

10:28:25 21 A. I don't think there were any
10:28:27 22 lieutenants. There was 14 to 16 other police
10:28:33 23 officers that were with -- with me.

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10:28:38 1 Q. Where were these other police officers?

10:28:40 2 Where were they located?

10:28:42 3 Were they also in the C District, or were
10:28:44 4 they in other districts?

10:28:45 5 A. No. No. They were in other districts
10:28:47 6 too.

10:28:47 7 Q. Okay. Were they all field training
10:28:49 8 officers?

10:28:50 9 A. No. These were probationary officers.

10:28:54 10 Q. They were probationary officers?

10:28:56 11 So what kinds of things would you observe on
10:28:58 12 these cameras?

10:29:00 13 MS. HUGGINS: Form.

10:29:03 14 THE WITNESS: At -- at the time, I would say
10:29:07 15 I didn't -- we didn't really know what we were
10:29:09 16 looking at. It was just people walking around.

10:29:11 17 BY MR. DAVENPORT:

10:29:12 18 Q. Did they ever say, you know, this
10:29:14 19 person's committing a crime? You know, we need to
10:29:18 20 dispatch police officers over into that area?

10:29:20 21 A. No. It was just us in the room. There
10:29:23 22 was no one --

10:29:24 23 Q. So what kinds of --

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10:29:25 1 A. -- with us.

10:29:26 2 Q. -- things were you guys looking for on
10:29:28 3 those cameras?

10:29:31 4 A. I don't remember at the time. We
10:29:32 5 weren't given much instruction.

10:29:34 6 Q. Okay. Were you instructed to take
10:29:36 7 notes on what you saw?

10:29:38 8 A. We were.

10:29:39 9 Q. And did you have to turn those notes
10:29:41 10 over to a lieutenant or anybody else to check your
10:29:43 11 work?

10:29:43 12 A. No.

10:29:44 13 Q. You just kept those for yourself?

10:29:46 14 A. I threw mine out, I believe.

10:29:48 15 Q. Okay. Did you have to report to
10:29:49 16 anybody what you saw on those cameras?

10:29:51 17 A. No.

10:29:53 18 Q. Did you have any cameras that were
10:29:55 19 located on Schmarbeck Avenue?

10:29:58 20 A. No.

10:30:01 21 Q. Where, typically, would these cameras
10:30:04 22 be located?

10:30:05 23 Would they be mostly at busy intersections

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10:30:07 1 or businesses?

10:30:08 2 MS. HUGGINS: Form.

10:30:10 3 THE WITNESS: I don't know the rhyme or
10:30:13 4 reason to where the cameras are placed.

10:30:16 5 BY MR. DAVENPORT:

10:30:17 6 Q. So this is what you would have done
10:30:19 7 from December 1st, 2016, to December 29th of 2016,
10:30:23 8 correct?

10:30:24 9 A. I don't know if it's exactly until the
10:30:26 10 29th. I got my vest a week -- a week or so before
10:30:33 11 the incident.

10:30:34 12 Q. Okay.

10:30:36 13 A. So --

10:30:36 14 Q. So you would have received that either
10:30:39 15 shortly before or right around Christmas of 2016?

10:30:42 16 A. Yeah.

10:30:44 17 Q. Did you immediately go out into the
10:30:46 18 field after that?

10:30:46 19 A. Yes.

10:30:47 20 Q. Who did you go out with?

10:30:49 21 Who -- who was, you know, taking you around
10:30:51 22 to help you with your training?

10:30:53 23 A. Police Officer Schultz.

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10:30:55 1 Q. Did you do any other training with any
10:30:56 2 other officers at that time?

10:30:58 3 A. No.

10:30:59 4 Q. How long did your training last for?

10:31:01 5 A. 16 weeks.

10:31:03 6 Q. And so that 16 weeks would have been
10:31:06 7 beginning on November 4th of 2016, or would it have
10:31:10 8 been beginning when you received your vest in
10:31:14 9 December of 2016?

10:31:14 10 A. The day I received my vest.

10:31:17 11 Q. Okay. And so those 16 weeks were just
10:31:19 12 with Officer Schultz?

10:31:21 13 A. Yes.

10:31:24 14 Q. What kinds of things would you -- what
10:31:27 15 kinds of calls would you make with Officer Schultz?

10:31:30 16 A. Our calls --

10:31:32 17 MS. HUGGINS: Form.

10:31:33 18 THE WITNESS: Our calls varied. Shootings,
10:31:37 19 domestics, car accidents, unknown troubles.

10:31:42 20 BY MR. DAVENPORT:

10:31:43 21 Q. Do you remember the first week of
10:31:44 22 training with Officer Schultz?

10:31:47 23 A. I remember the first day.

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10:31:48 1 Q. The first day? What happened on the
10:31:51 2 first day?

10:31:51 3 A. There was a shots fired on Deshler.

10:31:54 4 Q. Did you respond to that call?

10:31:56 5 A. Yes.

10:31:56 6 Q. With Officer Schultz?

10:31:58 7 A. Yes.

10:31:59 8 Q. What was the outcome of that call?

10:32:03 9 A. Afternoon -- the afternoon shift took
10:32:07 10 it over, and me and Karl Schultz left around
10:32:13 11 10 minutes before 4 because we were done.

10:32:16 12 Q. Were you working the day shift at the
10:32:17 13 time then?

10:32:18 14 A. We were working the day shift, yeah.

10:32:19 15 Q. Did you work the day shift after your
10:32:22 16 first 16 weeks?

10:32:23 17 A. No. I went to afternoons.

10:32:24 18 Q. Afternoon shift?

10:32:25 19 Did you work any other shifts besides
10:32:26 20 day shift and afternoon shift?

10:32:28 21 A. No.

10:32:30 22 Q. So what time, approximately, did you
10:32:33 23 recall to that call on your first day?

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10:32:38 1 A. Later in the day. I'm not -- I don't
10:32:41 2 remember.

10:32:41 3 Q. Do you remember approximately how long
10:32:42 4 you were at that first call for?

10:32:47 5 A. I do not know. I don't remember.

10:32:49 6 Q. Was anybody injured at that call?

10:32:51 7 A. No.

10:32:56 8 Q. So how do you typically begin each day,
10:33:02 9 you know, during your first 16 weeks -- we'll --
10:33:04 10 we'll start with your first 16 weeks.

10:33:06 11 During your first 16 weeks, how would you
10:33:08 12 begin each shift during the day shift?

10:33:12 13 A. We show up to work at 5:30. We get
10:33:17 14 dressed. 6 o'clock is brief by the lieutenant.
10:33:20 15 Lieutenant McHugh. And then we start going to
10:33:25 16 calls.

10:33:25 17 Q. Was Lieutenant McHugh your lieutenant
10:33:27 18 at the time?

10:33:27 19 A. Yes.

10:33:29 20 Q. Did you report to any other lieutenants
10:33:31 21 at that time?

10:33:32 22 A. No.

10:33:36 23 Q. Did you have a set schedule for when

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10:33:38 1 you would work during that time, besides the day
10:33:40 2 shift? Did you have set days that you would work?

10:33:43 3 A. We work four days on, four days off;
10:33:47 4 four days on, three days off.

10:33:51 5 Q. And that was consistent for your entire
10:33:53 6 16 weeks?

10:33:53 7 A. Yes.

10:33:53 8 Q. Do you remember if you worked the day
10:33:55 9 before the incident on January 1st, 2016 -- or
10:34:02 10 2017?

10:34:03 11 A. I don't remember.

10:34:03 12 Q. Do you remember if you worked the day
10:34:04 13 after?

10:34:09 14 A. I don't, no. Sorry.

10:34:11 15 Q. Do you remember what you did the night
10:34:12 16 before January 1st, 20 -- 2017?

10:34:18 17 A. No.

10:34:19 18 Q. Did you celebrate the new year?

10:34:21 19 A. No.

10:34:21 20 Q. No?

10:34:22 21 A. No.

10:34:23 22 Q. What time did you report to work on
10:34:29 23 January 1st, 2017?

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10:34:29 1 A. 6. 6 a.m.

10:34:30 2 Q. Okay. And did you get a briefing from
10:34:34 3 Lieutenant McHugh?

10:34:35 4 A. Yes.

10:34:36 5 Q. Do you remember what he said that day?

10:34:38 6 A. I do not.

10:34:40 7 Q. Do you remember if you made any calls
10:34:43 8 before going to Schmarbeck?

10:34:45 9 A. If I -- I'm sorry?

10:34:46 10 MS. HUGGINS: Form.

10:34:46 11 BY MR. DAVENPORT:

10:34:47 12 Q. Did you remember responding to any
10:34:49 13 calls before going to Schmarbeck?

10:34:52 14 A. One. I responded to the first call.
10:34:55 15 I think it was a robbery.

10:34:56 16 Q. Okay. Approximately what time was that
10:35:09 17 robbery that you responded to?

10:35:12 18 A. It was early. I don't remember,
10:35:16 19 though.

10:35:16 20 Q. Was it before you arrived at Schmarbeck
10:35:21 21 or was it on Schmarbeck?

10:35:22 22 A. It was before Schmarbeck.

10:35:25 23 Q. Okay. So I'm going to show you what's

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10:35:27 1 been marked as Exhibit 7.

10:35:42 2 So the only robbery that I'm finding is on
10:35:47 3 Schmarbeck. Do you see any other robberies or
10:35:50 4 anything that could possibly have been a robbery?

10:35:52 5 A. Well, Schmarbeck is a larceny, but
10:35:55 6 Sattler was the robbery.

10:35:56 7 Q. Okay. So it's listed as a fight.
10:35:59 8 Do you know why it was listed as a fight instead
10:36:02 9 of a robbery?

10:36:02 10 A. I don't. I don't know why that's
10:36:04 11 listed as a fight.

10:36:05 12 Q. So what was that situation? What
10:36:09 13 happened there?

10:36:12 14 MS. HUGGINS: Form. You can answer.

10:36:16 15 THE WITNESS: I don't remember the nature of
10:36:19 16 the call, because Karl was talking to the
10:36:25 17 complainant, but I looked down a driveway and
10:36:28 18 a dude was hopping the fence, and apparently that
10:36:31 19 was the guy that we were looking for.

10:36:32 20 BY MR. DAVENPORT:

10:36:32 21 Q. Did you go after him?

10:36:33 22 A. I didn't.

10:36:34 23 Q. Did you catch him?

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10:36:35 1 A. I didn't.

10:36:35 2 Q. Did Karl catch him?

10:36:38 3 A. No. There were other officers that
10:36:41 4 caught him.

10:36:42 5 Q. Would they have been other C District
10:36:45 6 officers?

10:36:45 7 A. Yes.

10:36:46 8 Q. Do you remember who?

10:36:47 9 A. I don't.

10:36:48 10 Q. If you saw a list of officers that were
10:36:51 11 working that shift that day, would that possibly
10:36:53 12 refresh your recollection?

10:36:54 13 A. It's -- it's not going to, just because
10:36:59 14 I was so brand new, I wouldn't know who -- I
10:37:06 15 wouldn't know who caught him.

10:37:07 16 Q. Okay. So how did you decide, between
10:37:12 17 you and Karl, who would go to go speak with the
10:37:14 18 person initially? Who would leave the car to go
10:37:17 19 speak with somebody?

10:37:18 20 MS. HUGGINS: Form.

10:37:19 21 THE WITNESS: At -- at this point in time,
10:37:20 22 I'm so brand new that Karl is doing everything.

10:37:23 23 BY MR. DAVENPORT:

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10:37:23 1 Q. Would there have been any times that
10:37:25 2 you would have gone to go speak with the
10:37:27 3 complainant rather than Karl?

10:37:29 4 A. On -- on things that weren't as high of
10:37:34 5 a priority.

10:37:35 6 Q. Okay.

10:37:35 7 A. Maybe things that are less dangerous.

10:37:37 8 Q. Okay. Was there any set priority that
10:37:42 9 it would be Karl going instead of you to go make
10:37:45 10 that first initial contact with the complainant?

10:37:48 11 MS. HUGGINS: Form.

10:37:48 12 THE WITNESS: No. He -- he would just
10:37:53 13 observe whether or not it was something that he
10:37:56 14 wanted me to handle.

10:37:58 15 BY MR. DAVENPORT:

10:37:59 16 Q. Okay. And how would he make that
10:38:00 17 decision?

10:38:00 18 MS. HUGGINS: Form.

10:38:01 19 THE WITNESS: I can't -- I can't answer
10:38:02 20 that. You would have to ask -- ask him.

10:38:05 21 BY MR. DAVENPORT:

10:38:05 22 Q. What kinds of calls would he allow you
10:38:07 23 to go speak with the complainant rather than Karl

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10:38:10 1 to go speak with the complainant?

10:38:15 2 A. I -- I don't remember the nature of the
10:38:17 3 call, but I know he let me do the 33 Schmarbeck
10:38:22 4 call.

10:38:22 5 Q. Do you remember if he let you do -- to
10:38:25 6 go speak with the complainant for any of the other
10:38:27 7 calls that you responded to before 33 Schmarbeck?

10:38:29 8 A. I don't.

10:38:31 9 Q. So this -- this first call where there
10:38:34 10 was an accident or injury over at Sycamore, and the
10:38:38 11 time would have been 6:14 a.m., do you remember
10:38:41 12 that call?

10:38:42 13 A. I don't.

10:38:42 14 Q. No?

10:38:44 15 What about the alarm that was at
10:38:46 16 1830 Genesee Street?

10:38:48 17 A. I don't remember.

10:38:49 18 Q. Do you know why, for that accident or
10:38:52 19 injury, you would have been going to the next call
10:38:56 20 four minutes after the accident or injury call?

10:39:01 21 A. What do --

10:39:01 22 Q. So --

10:39:03 23 A. -- you mean? Just -- just why it goes

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10:39:03 1 from 6:14 to 6:18?

10:39:06 2 Q. Well, I -- I guess what I'm saying is:
10:39:08 3 If there's an accident or injury that you responded
10:39:09 4 to, would you know why it would only take four
10:39:12 5 minutes for responding to that accident or injury?

10:39:15 6 A. I don't remember -- I don't remember
10:39:18 7 the specifics of that.

10:39:20 8 Q. Okay. Did you ever respond to any
10:39:23 9 other accidents or injuries that day?

10:39:30 10 A. Yeah. The one on 37 Schmarbeck. And
10:39:35 11 then it looks like that's it.

10:39:40 12 Q. After 37 Schmarbeck, where was the next
10:39:45 13 call that you responded to?

10:39:49 14 A. The traffic stop at 1773 Bailey.

10:39:53 15 Q. And what time would that have been at?

10:39:57 16 A. 1314.

10:39:58 17 Q. And that would refer to 1:14 p.m.?

10:40:01 18 A. Yes.

10:40:03 19 Q. So it looks like you were there at that
10:40:06 20 call for four minutes. Would that be accurate?

10:40:10 21 Because your next dispatch --

10:40:11 22 A. Oh, okay.

10:40:12 23 Q. -- was at 1:18 p.m.

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10:40:15 1 A. Yeah, that's what it says.

10:40:18 2 Q. Is there any reason to expect that that
10:40:21 3 would not be accurate?

10:40:22 4 Was there some times where they would have
10:40:26 5 you dispatched for the next call before you had
10:40:29 6 actually finished at the call that you were
10:40:32 7 responding to?

10:40:32 8 MS. HUGGINS: Form. You've just asked two
10:40:34 9 questions in a row.

10:40:35 10 MR. DAVENPORT: So I'll start with my first
10:40:37 11 question.

10:40:40 12 Is there any reason to believe that this
10:40:41 13 record is not accurate?

10:40:43 14 THE WITNESS: No. This is -- this is
10:40:44 15 accurate.

10:40:45 16 BY MR. DAVENPORT:

10:40:45 17 Q. Is there any time where you would
10:40:48 18 respond to a call and it would not be entered on
10:40:51 19 your dispatch monitor until sometime after you had
10:40:55 20 actually responded to that call?

10:40:56 21 A. No. We -- we respond to the calls when
10:40:59 22 they're given.

10:41:00 23 Q. And how do you respond to those calls?

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10:41:02 1 A. We drive there and we go speak to
10:41:04 2 someone.

10:41:04 3 Q. Do you have to call in when you're
10:41:07 4 responding to a call?

10:41:09 5 A. Can you rephrase that?

10:41:11 6 Q. Do you have to radio in when you're
10:41:13 7 responding to a call?

10:41:16 8 A. They'll dispatch a call and then we
10:41:18 9 say, clear, and then we go to it.

10:41:21 10 Q. Is there any other way to respond to
10:41:24 11 a call and have it entered on this form?

10:41:28 12 A. I mean, if these are -- if these are
10:41:30 13 self-initiated traffic stops, we call radio and
10:41:32 14 say, hey, we're at a traffic stop.

10:41:34 15 Q. And who enters these entries? Is it
10:41:38 16 made by the Buffalo Police Department or is it made
10:41:40 17 by another entity?

10:41:42 18 A. Dispatch, so, yeah, BPD.

10:41:45 19 Q. It would be the Buffalo Police
10:41:48 20 Department?

10:41:48 21 A. Yeah.

10:41:48 22 Q. They control the dispatching?

10:41:51 23 MS. HUGGINS: Form.

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10:41:52 1 THE WITNESS: Who -- yeah, whoever controls
10:41:54 2 the dispatching.

10:41:55 3 BY MR. DAVENPORT:

10:41:56 4 Q. Okay. Do you know who controls the
10:41:58 5 dispatch? Do you know any individuals who --

10:42:01 6 A. No.

10:42:01 7 Q. -- are in charge of that?

10:42:03 8 Do you ever speak with them over the radio
10:42:05 9 besides saying clear or that you're responding to
10:42:07 10 a call?

10:42:09 11 A. In what context?

10:42:11 12 Q. Do you, you know, speak to them about
10:42:13 13 any personal matters?

10:42:14 14 A. No.

10:42:15 15 Q. Just about work?

10:42:17 16 A. Yes.

10:42:17 17 Q. Do you ever get names of those
10:42:19 18 individuals?

10:42:21 19 A. No, I don't know their names.

10:42:24 20 Q. So the criminal mischief that was at
10:42:26 21 1964 Bailey Avenue, do you remember anything about
10:42:29 22 that call?

10:42:30 23 A. No.

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10:42:32 1 Q. So I'm actually going to direct your
10:42:34 2 attention to at -- it would be 2:27 p.m., there was
10:42:39 3 an assault that was on North Ogden Street.

10:42:42 4 Do you see where that is?

10:42:45 5 A. Yes.

10:42:48 6 Q. Now, that says that you were at that
10:42:50 7 call until 1816, and that would refer to 6:16 p.m.,
10:42:56 8 correct?

10:42:56 9 MS. HUGGINS: Form.

10:42:57 10 THE WITNESS: Yes.

10:42:58 11 BY MR. DAVENPORT:

10:43:00 12 Q. Do you remember anything about that
10:43:01 13 assault? About that call?

10:43:03 14 A. I do not.

10:43:05 15 Q. Do you have any reason to know why you
10:43:07 16 were there at that call for four hours?

10:43:10 17 A. I do not.

10:43:12 18 Q. Is there any reason to believe that
10:43:15 19 that time would not be accurate for 6:16 p.m.?

10:43:18 20 A. I do not know.

10:43:25 21 Q. How long have you been with the Buffalo
10:43:27 22 Police Department now?

10:43:27 23 A. A little over three years.

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10:43:28 1 Q. Are you still with the C District?

10:43:31 2 A. No.

10:43:31 3 Q. Where are you now?

10:43:32 4 A. I'm in Bravo.

10:43:33 5 Q. How long have you been with the

10:43:34 6 B District?

10:43:35 7 We'll refer to it as B District.

10:43:37 8 A. Since October.

10:43:38 9 Q. And were you with C District prior to

10:43:41 10 that?

10:43:41 11 A. I was in C District prior to that.

10:43:44 12 Q. So that would have been about two years

10:43:45 13 that you were with C District?

10:43:47 14 A. I was in Delta District for two months

10:43:52 15 somewhere in there.

10:43:54 16 Q. That would have been during your time

10:43:56 17 at C District?

10:43:57 18 MS. HUGGINS: Form.

10:43:58 19 BY MR. DAVENPORT:

10:43:58 20 Q. During the two years that you would

10:44:00 21 have been in C District?

10:44:01 22 A. Yeah. Somewhere in there I was in

10:44:02 23 Delta for -- for two months. Two or three months.

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10:44:05 1 Q. And what was that reason for

10:44:06 2 transferring over to Delta District?

10:44:08 3 A. Just wanted to see something new.

10:44:10 4 Q. Okay. Do you get to make that
10:44:12 5 decision, as a police officer, where you want
10:44:13 6 to patrol?

10:44:14 7 A. We have to request a transfer.

10:44:15 8 Q. Okay. And then who approves those
10:44:18 9 transfers?

10:44:20 10 A. Commissioner Lockwood.

10:44:22 11 Q. Okay. Is there any other officers that
10:44:25 12 can approve those transfers?

10:44:27 13 A. It all goes through Commissioner
10:44:31 14 Lockwood.

10:44:31 15 Q. So now to go to C District, you had to
10:44:34 16 request a transfer as well, correct?

10:44:35 17 A. Yes.

10:44:38 18 Q. When did you request that transfer to
10:44:45 19 Bravo District?

10:44:46 20 A. I -- I don't remember. I know I went
10:44:48 21 to Bravo in October, though.

10:44:53 22 Q. When -- was there any time gap
10:45:00 23 in between at C District and Bravo District?

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10:45:02 1 A. I don't know what you mean.

10:45:04 2 Q. Did you finish working at C District
10:45:08 3 and then take some time off before entering in
10:45:10 4 Bravo District?

10:45:11 5 A. No.

10:45:12 6 Q. Okay. After you finished -- completed
10:45:16 7 your first 16 weeks of training in C District, who
10:45:19 8 would you patrol with mostly?

10:45:22 9 A. Other C District officers.

10:45:24 10 Q. Okay. Was there anybody in particular?

10:45:28 11 A. I don't -- I don't understand what you
10:45:30 12 mean. That was my -- my unit.

10:45:32 13 Q. No. I understand that --

10:45:33 14 A. Okay.

10:45:34 15 Q. -- C District was your unit, but we
10:45:36 16 talked about how, you know, during your first
10:45:38 17 16 weeks, you were always with Karl Schultz.

10:45:40 18 A. Oh, okay.

10:45:41 19 Q. So after your first 16 weeks, were
10:45:43 20 there any other officers that you would patrol
10:45:45 21 with besides Karl Schultz?

10:45:47 22 A. Yes. There were other officers at C
10:45:51 23 that were in my platoon. They've all changed and

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10:45:55 1 went to other areas.

10:45:57 2 Q. So going back to going to D District
10:46:02 3 and now B District, were there any reasons for your
10:46:05 4 request to transfer out of C District besides
10:46:07 5 seeing something new?

10:46:09 6 Were you happy in C District?

10:46:11 7 MS. HUGGINS: Form.

10:46:11 8 THE WITNESS: Indifferent. My partner
10:46:17 9 wanted to go to Bravo, so I went with him.

10:46:21 10 BY MR. DAVENPORT:

10:46:21 11 Q. Okay. Who -- who's your partner that
10:46:22 12 wanted to leave?

10:46:23 13 A. Christopher Brigett.

10:46:25 14 Q. Okay. And how do you get assigned
10:46:26 15 a partner in a certain district?

10:46:29 16 A. We can choose.

10:46:30 17 Q. Okay. Was this individual somebody
10:46:33 18 that you chose while you were in C District?

10:46:36 19 A. Yes.

10:46:38 20 Q. And when, approximately, did you make
10:46:42 21 that request to have him be your partner?

10:46:47 22 A. When I came back from Delta.

10:46:49 23 Q. Okay. Did you work with him at all

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10:46:51 1 before you went to Delta District?

10:46:53 2 A. We went to academy together.

10:46:54 3 Q. Okay. Did you patrol with him at all?

10:46:56 4 A. Never.

10:46:57 5 Q. Okay. So he would have been training
10:46:59 6 around the same time as you, correct?

10:47:00 7 A. Same exact time.

10:47:01 8 Q. Okay. Did he receive his vest at the
10:47:03 9 same time?

10:47:08 10 A. I'm unsure.

10:47:09 11 Q. Did he start with the Buffalo training
10:47:10 12 academy approximately at the same time?

10:47:12 13 A. Same time.

10:47:29 14 Q. So I want to go back to your dispatch
10:47:31 15 monitor.

10:47:33 16 So the first time that you went to
10:47:34 17 Schmarbeck on that day was 10:56 a.m., correct?

10:47:40 18 A. Yes. That's what it says, yeah.

10:47:43 19 Q. And you made -- did you happen to drive
10:47:46 20 on Schmarbeck at all as part of your patrol duties
10:47:49 21 prior to that day?

10:47:51 22 A. I don't know. I don't remember.

10:47:55 23 Q. Would you ever make driving through

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10:47:58 1 Schmarbeck part of your normal patrol duties for
10:48:00 2 a day if you weren't responding to a call there?

10:48:03 3 MS. HUGGINS: Form.

10:48:04 4 THE WITNESS: Back then, I -- I can tell you
10:48:08 5 that I don't -- I don't remember.

10:48:15 6 BY MR. DAVENPORT:

10:48:16 7 Q. So even if it wasn't back then,
10:48:17 8 recently, because you were in C District as close
10:48:20 9 to as last year, in 2019, during that time in 2019,
10:48:24 10 would you ever patrol on Schmarbeck if it wasn't
10:48:27 11 for responding to a call there?

10:48:28 12 A. Rarely.

10:48:29 13 Q. Rarely?

10:48:30 14 A. Rarely.

10:48:32 15 Q. Were there any streets that you would
10:48:34 16 typically patrol, as opposed to others?

10:48:36 17 A. Broadway.

10:48:41 18 Q. Besides Broadway, were there any other
10:48:44 19 streets that you would typically patrol?

10:48:49 20 A. I mean, C District is a small district,
10:48:52 21 so a lot of them, but --

10:49:00 22 Q. I'm sorry. I've just got to find an
10:49:03 23 exhibit really quickly.

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10:49:40 1 So I'm going to show you what's been marked
10:49:43 2 as Exhibit 3.

10:50:06 3 All right. So do you recognize this
10:50:07 4 document?

10:50:09 5 A. This one, yes.

10:50:10 6 Q. And what do you recognize it to be?

10:50:12 7 A. A CAD report.

10:50:14 8 Q. Did you review any documents before
10:50:17 9 your deposition today?

10:50:19 10 A. Yes.

10:50:19 11 Q. And what documents did you review?

10:50:21 12 A. Actually, it was these three.

10:50:23 13 Q. It was just those three documents?

10:50:26 14 MS. HUGGINS: Form. Did you -- did you
10:50:27 15 review this before your testimony today?

10:50:32 16 THE WITNESS: Yeah. Yeah. You did show
10:50:34 17 this to me.

10:50:35 18 MS. HUGGINS: Did you review any other CAD
10:50:37 19 reports?

10:50:38 20 THE WITNESS: No, no other CAD reports.

10:50:40 21 MS. HUGGINS: Did you review the CAD report
10:50:41 22 for 37 Schmarbeck call?

10:50:43 23 THE WITNESS: Oh, yes, I did do that.

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10:50:46 1 I did.

10:50:47 2 BY MR. DAVENPORT:

10:50:47 3 Q. Besides these -- those four documents,
10:50:49 4 did you review any other documents?

10:50:53 5 A. There was a -- that thick one.

10:50:56 6 MS. HUGGINS: Only for the preparation of
10:50:57 7 your testimony --

10:50:57 8 THE WITNESS: Oh.

10:50:58 9 MS. HUGGINS: -- is what he's asking you.

10:50:59 10 THE WITNESS: Then no.

10:51:01 11 BY MR. DAVENPORT:

10:51:02 12 Q. What was the thick document that you're
10:51:03 13 referring to?

10:51:03 14 A. I don't know the name of it.

10:51:05 15 MS. HUGGINS: I think he's referring to the
10:51:06 16 interrogatories, when they were prepared and
10:51:07 17 reviewed by him.

10:51:08 18 MR. DAVENPORT: Okay.

10:51:08 19 MS. HUGGINS: But, obviously, not for the
10:51:10 20 deposition.

10:51:10 21 MR. DAVENPORT: I understand.

10:51:11 22 Did you watch any videos?

10:51:11 23 THE WITNESS: Yes.

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10:51:13 1 BY MR. DAVENPORT:

10:51:13 2 Q. What video did you watch?

10:51:15 3 A. His -- his video.

10:51:16 4 Q. Okay. Did you watch any other videos
10:51:18 5 in preparation for this?

10:51:19 6 A. No.

10:51:21 7 Q. So now going -- turning back to the
10:51:23 8 complaint summary report, this says that it was
10:51:27 9 reported at 10:32 a.m. Does that -- is that
10:51:31 10 accurate to you?

10:51:33 11 A. It -- I mean, if it's on here, yes,
10:51:36 12 it's accurate.

10:51:37 13 Q. Okay. And it says that -- I -- I
10:51:40 14 believe it would refer to you, Kyle Moriarity, and
10:51:44 15 Karl Schultz being dispatched at 10:56 a.m.; is
10:51:49 16 that correct?

10:51:49 17 A. Yeah, 10:56.

10:51:51 18 Q. So what is the difference between
10:51:53 19 dispatched and received?

10:51:57 20 Does -- what -- what does received refer to?
10:51:59 21 Let's start with that.

10:52:00 22 A. I -- I don't know what received means,
10:52:03 23 but 10:56 is when they give us the call.

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10:52:07 1 Received might mean that that's when 911
10:52:12 2 gets it to dispatch.

10:52:14 3 Q. So what is the difference between 911
10:52:17 4 and dispatch?

10:52:19 5 A. Someone calls 911 and then 911 will
10:52:23 6 give it to dispatch to give to us.

10:52:25 7 Q. What does 911 refer to?

10:52:27 8 A. 911 is where the 91 -- 911 call goes
10:52:32 9 to.

10:52:33 10 Q. Okay. And where does it go to?

10:52:35 11 A. Wherever that office is. I have no
10:52:37 12 idea.

10:52:37 13 Q. Okay. And then dispatch is the Buffalo
10:52:42 14 Police Department?

10:52:42 15 A. Yes.

10:52:43 16 Q. Okay. So now there's a 20-minute gap
10:52:47 17 in between it going from 911 to dispatch with the
10:52:52 18 Buffalo Police Department?

10:52:53 19 A. Yes.

10:52:54 20 Q. Okay. Is that typical for 20 minutes
10:52:58 21 to elapse before --

10:53:00 22 A. Yes.

10:53:00 23 MS. HUGGINS: Form.

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10:53:02 1 BY MR. DAVENPORT:

10:53:02 2 Q. Is there a certain type of call that
10:53:04 3 wouldn't take 20 minutes?

10:53:05 4 A. Shootings.

10:53:07 5 Q. Okay. And what would be the typical
10:53:10 6 response time for that?

10:53:11 7 MS. HUGGINS: Form.

10:53:15 8 THE WITNESS: It's -- it's one of those
10:53:16 9 things you just go to immediately.

10:53:18 10 BY MR. DAVENPORT:

10:53:18 11 Q. Okay. Okay. So now when it says
10:53:24 12 dispatched, does that refer to dispatch receiving
10:53:27 13 it, or does that refer to somebody accepting that
10:53:30 14 call from dispatch?

10:53:31 15 MS. HUGGINS: Form.

10:53:32 16 THE WITNESS: Someone accepting the call
10:53:35 17 from dispatch.

10:53:35 18 BY MR. DAVENPORT:

10:53:36 19 Q. And would that somebody be a police
10:53:38 20 officer in the C District?

10:53:39 21 A. Yes.

10:53:42 22 Q. Do you know if you were responding to
10:53:44 23 another call at that time?

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10:53:46 1 A. I don't.

10:53:48 2 Q. So turning back to Exhibit 7 on the
10:53:50 3 dispatch monitor, it looks like you would have been
10:53:55 4 on scene at 145 Sprenger Avenue?

10:54:00 5 A. Yeah.

10:54:00 6 Q. Do you see that?

10:54:01 7 A. Yes.

10:54:02 8 Q. And then it's -- it look -- it appears
10:54:05 9 that you would have been on scene starting at
10:54:07 10 9:27, until would that be 10:56 when you became
10:54:12 11 available?

10:54:12 12 A. Yes.

10:54:12 13 Q. Okay. So turning back towards Exhibit 3,
10:54:21 14 what type of call was it that you responded to at
10:54:25 15 33 Schmarbeck?

10:54:26 16 A. Larceny.

10:54:29 17 Q. And do you remember the nature of that
10:54:30 18 call?

10:54:30 19 A. I don't.

10:54:33 20 Q. Do you remember the individual that you
10:54:34 21 spoke to that day?

10:54:35 22 A. No.

10:54:38 23 Q. When it says that the location is

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10:54:40 1 1800 Broadway and that -- what does that refer
10:54:40 2 to?

10:54:47 3 Do you see on --

10:54:48 4 A. Oh, yeah. I don't know what that
10:54:51 5 refers to.

10:54:53 6 Q. Okay. And then when it says the phone
10:54:55 7 number, do you know what that refers to?

10:54:58 8 A. That's the phone number that was used
10:54:59 9 to call 911.

10:55:01 10 Q. That would have been the complainant's
10:55:02 11 phone call?

10:55:03 12 A. Yeah.

10:55:03 13 Q. Okay. So at 10:33, the entry says,
10:55:11 14 male, known, took items from his home.

10:55:13 15 Do you know what that entry would refer to?

10:55:16 16 A. Whoever the complainant is knows the
10:55:18 17 male who took items from his home.

10:55:20 18 Q. Now, would that information have been
10:55:22 19 conveyed to you who that individual was that took
10:55:26 20 the items from this individual's home?

10:55:28 21 MS. HUGGINS: Form.

10:55:29 22 THE WITNESS: The -- yeah. I mean, the --
10:55:33 23 the complainant would have -- would have told me.

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10:55:35 1 BY MR. DAVENPORT:

10:55:35 2 Q. Do you remember if the complainant told
10:55:37 3 you who took the items from his home?

10:55:39 4 A. I don't remember.

10:55:40 5 Q. Okay. Do you remember if dispatch told
10:55:42 6 you who the individual was that took items from his
10:55:45 7 home?

10:55:45 8 A. No, I don't remember.

10:55:46 9 Q. But that's what that entry refers to is
10:55:50 10 that it's known who the individual was that took
10:55:52 11 items from this complainant's home?

10:55:54 12 A. Yes.

10:55:56 13 Q. Okay. So now the next entry that
10:55:59 14 I want you to look at is en route, C230.

10:56:03 15 What does that refer to?

10:56:04 16 A. We are en route to the location.

10:56:07 17 Q. So when you say we, that refers to Karl
10:56:10 18 Schultz and you?

10:56:11 19 A. Yes.

10:56:12 20 Q. Was your call sign C230?

10:56:15 21 A. Yes.

10:56:15 22 Q. And that's how it would appear on these
10:56:18 23 complaint summary reports?

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10:56:19 1 A. Yes.

10:56:21 2 Q. Now, when it says dispatched at the
10:56:23 3 same time, what does that refer to?

10:56:28 4 A. We're --

10:56:32 5 MS. HUGGINS: Form.

10:56:33 6 THE WITNESS: We're en route at the same
10:56:34 7 time that we're dispatched. They dispatch it and
10:56:36 8 we're on our way.

10:56:38 9 BY MR. DAVENPORT:

10:56:38 10 Q. Okay. Now, do you see that at
10:56:40 11 10:56:53 -- so this would have been six seconds
10:56:43 12 after -- that a disposition has been added --

10:56:45 13 A. Yes.

10:56:45 14 Q. -- to that complaint summary report?

10:56:48 15 So now I guess what you're telling me is
10:56:51 16 that you would have been dispatched and en route at
10:56:54 17 10:56:47 and that you would have disposed of the
10:56:57 18 case in six seconds?

10:56:58 19 MS. HUGGINS: Form.

10:56:59 20 THE WITNESS: I don't -- I don't know why --
10:57:05 21 I don't remember.

10:57:06 22 BY MR. DAVENPORT:

10:57:06 23 Q. And then that last entry says archived

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10:57:09 1 at the same exact time, correct?

10:57:11 2 A. Yes.

10:57:11 3 Q. Okay. And what does archived refer to?

10:57:13 4 A. This was dispo'd as archived for
10:57:19 5 whatever reason.

10:57:21 6 Q. Do officers receive any sort of
10:57:23 7 training for what these complaint summary reports
10:57:24 8 are and how to read them?

10:57:27 9 A. Not -- not really, no.

10:57:28 10 Q. Do they give you any -- does the
10:57:31 11 Buffalo Police Academy give you any training how to
10:57:35 12 make entries onto complaint summary reports?

10:57:36 13 A. We don't make these entries. Dispatch
10:57:39 14 does.

10:57:39 15 Q. Just dispatch?

10:57:40 16 A. Yeah.

10:57:40 17 Q. Is it possible for an officer to make
10:57:43 18 entries on the complaint summary reports?

10:57:45 19 A. We can add things to it.

10:57:47 20 Q. And then how would you make those
10:57:49 21 additions?

10:57:49 22 A. On the computer in the vehicle.

10:57:51 23 Q. Okay. Have you ever done that before?

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10:57:55 1 A. Yes.

10:57:55 2 Q. And did they give you any training on
10:57:57 3 how to make those entries from your computer?

10:57:59 4 A. No.

10:58:03 5 Q. Is it a certain program that you use
10:58:05 6 for making those entries?

10:58:08 7 A. Yes.

10:58:09 8 Q. Do you know what kind of a program that
10:58:11 9 is?

10:58:11 10 A. I do not.

10:58:11 11 Q. Okay. How does that appear on your
10:58:16 12 computer screen?

10:58:19 13 How -- how does the complaint summary report
10:58:21 14 where you can make entries, how does that appear on
10:58:23 15 your computer screen?

10:58:24 16 MS. HUGGINS: Form.

10:58:26 17 THE WITNESS: It does not look like this.

10:58:27 18 BY MR. DAVENPORT:

10:58:28 19 Q. Okay. Can you generally describe what
10:58:30 20 that -- what it kind of looks like?

10:58:32 21 A. Something similar to it. I mean, all
10:58:34 22 this -- all the same information shows up.

10:58:37 23 Q. Okay. And what kinds of changes can

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10:58:41 1 you make from your computer screen?

10:58:43 2 A. I can't change anything. I can just
10:58:45 3 add to it.

10:58:45 4 Q. Okay. Okay. So if -- if the time was
10:58:48 5 incorrect, you wouldn't be able to change that?

10:58:50 6 A. No. I can call dispatch and then they
10:58:53 7 can change it.

10:58:53 8 Q. Okay.

10:58:54 9 A. But it will just continue on with
10:58:56 10 adding. It won't change it change it.

10:58:58 11 Q. Okay. Besides this lawsuit here, have
10:59:03 12 you been involved with any other lawsuits?

10:59:05 13 A. No.

10:59:05 14 Q. What about have you been involved with
10:59:07 15 any criminal proceedings?

10:59:08 16 A. No.

10:59:09 17 MS. HUGGINS: Form. Do you mean as
10:59:11 18 a witness?

10:59:12 19 MR. DAVENPORT: Well, yeah. I was going to
10:59:13 20 get to that.

10:59:14 21 MS. HUGGINS: You were going to get to that.
10:59:14 22 Okay.

10:59:14 23 BY MR. DAVENPORT:

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10:59:15 1 Q. As a witness, have you ever been called
10:59:16 2 to testify in a criminal proceeding?

10:59:19 3 A. Yes.

10:59:20 4 Q. What kinds of documents would you
10:59:21 5 review for those criminal proceedings?

10:59:24 6 A. Similar documents. Arrest forms, crime
10:59:31 7 reports.

10:59:32 8 Q. Would they have you review the
10:59:33 9 complaint summary report?

10:59:34 10 A. Sometimes.

10:59:35 11 Q. And would you have to give testimony on
10:59:37 12 those complaint summary reports?

10:59:38 13 A. Yes.

10:59:38 14 Q. What kinds of things would you have to
10:59:40 15 give testimony on?

10:59:42 16 MS. HUGGINS: Form.

10:59:42 17 BY MR. DAVENPORT:

10:59:43 18 Q. What kinds of entries on the complaint
10:59:44 19 summary report would you have to give testimony on?

10:59:47 20 MS. HUGGINS: Form. You can answer.

10:59:48 21 THE WITNESS: Just like here. Maybe things
10:59:51 22 that were -- were written on here or time frames.

10:59:55 23 BY MR. DAVENPORT:

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10:59:56 1 Q. Have you ever found that a complaint
10:59:58 2 summary report was entered incorrectly?

11:00:02 3 A. I'm confused. What do you mean?

11:00:04 4 Q. In your three years as a Buffalo police
11:00:07 5 officer, have you ever found that a complaint
11:00:09 6 summary report did not accurately reflect a call
11:00:12 7 that you made specifically or a call that you
11:00:14 8 responded to?

11:00:14 9 A. Well, just like -- just like here, they
11:00:17 10 entered it as a fight but it was a robbery.

11:00:19 11 Q. Okay.

11:00:20 12 A. So --

11:00:22 13 Q. So those types of errors then?

11:00:23 14 A. Yeah.

11:00:24 15 Q. Have you ever encountered any
11:00:28 16 discrepancies with the time that are on the
11:00:30 17 complaint summary report?

11:00:34 18 MS. HUGGINS: Form.

11:00:34 19 THE WITNESS: Can you --

11:00:36 20 BY MR. DAVENPORT:

11:00:36 21 Q. So on the complaint summary report it
11:00:37 22 gives a general time for when these actions would
11:00:40 23 have occurred.

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11:00:41 1 Have you ever noticed that there may be
11:00:43 2 errors with the entry for the time on those
11:00:46 3 complaint summary reports?

11:00:46 4 A. No. So everything is computer
11:00:50 5 documented --

11:00:51 6 Q. Right.

11:00:51 7 A. -- as it -- as it occurs. So the entry
11:00:54 8 initiated at 10:32:23. That's when said person
11:00:59 9 called from this number, and then it just -- it
11:01:01 10 just goes.

11:01:02 11 Q. Okay.

11:01:04 12 A. There will never be a discrepancy
11:01:06 13 with -- with the time.

11:01:06 14 Q. Is that entered by a computer or is it
11:01:10 15 entered by a person at dispatch?

11:01:14 16 MS. HUGGINS: Form.

11:01:15 17 THE WITNESS: I don't -- I don't know.

11:01:16 18 MR. DAVENPORT: Okay. So now I want to turn
11:01:19 19 your attention to the video.

11:01:21 20 And would you mind if we could get the
11:01:23 21 lights? That way there's no glare on the screen.

11:01:28 22 They just have to be the lights right in
11:01:31 23 front of the TV.

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11:01:44 1 MS. HUGGINS: It may be the shades to the
11:01:45 2 window.

11:01:46 3 MR. DAVENPORT: Okay. Could we redirect the
11:02:08 4 camera towards the television rather than towards
11:02:10 5 the witness for this segment? Is that possible?

11:02:17 6 THE VIDEOGRAPHER: Could we go off the
11:02:18 7 record?

11:02:18 8 MR. DAVENPORT: Yes, we can.

11:02:18 9 THE VIDEOGRAPHER: Thank you.

11:02:18 10 (A recess was then taken at 11:02 a.m.)

11:17:11 11 (On the record at 11:17 a.m.)

11:17:11 12 MR. DAVENPORT: All right, Mr. Moriarity, so
11:17:14 13 I asked you a few questions about the complaint
11:17:16 14 summary report for the first call that you made on
11:17:18 15 Schmarbeck at 33 Schmarbeck Avenue.

11:17:20 16 We are now going to watch a video that
11:17:23 17 depicts the events from that day for that first
11:17:26 18 call.

11:17:28 19 Mr. Hunt, would you please turn the video
11:17:30 20 camera towards the TV screen.

11:17:32 21 MS. HUGGINS: Form.

11:17:33 22 (Video clip played.)

11:17:33 23 BY MR. DAVENPORT:

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11:17:33 1 Q. So, now, Mr. Moriarity, watching this
11:17:36 2 video, do you remember what the weather was like
11:17:39 3 that day?

11:17:41 4 A. I -- I don't. I don't remember what it
11:17:43 5 was like.

11:17:47 6 Q. Do you remember, was it cold? Was it
11:17:49 7 warm?

11:17:49 8 A. January 1st, it was probably cold.

11:17:50 9 Q. Did you have to wear any sort of a hat
11:17:52 10 or gloves?

11:17:54 11 A. I -- I think I was wearing a beanie.

11:17:57 12 Q. A beanie?

11:17:58 13 A. Yeah.

11:18:00 14 Q. Now, this red van, have you seen this
11:18:02 15 red van before?

11:18:02 16 A. No.

11:18:05 17 Q. Did you happen to see that red van when
11:18:08 18 you appeared on Schmarbeck Avenue on January 1st,
11:18:12 19 2017?

11:18:12 20 A. I don't remember.

11:18:13 21 Q. Seeing this red van here today, does
11:18:15 22 that refresh your recollection of seeing a van that
11:18:18 23 day?

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11:18:19 1 A. No.

11:18:20 2 Q. No?

11:18:21 3 Do you know who this individual is walking
11:18:30 4 out of the van?

11:18:30 5 And I would say for the record that the time
11:18:32 6 stamp is 9:53:16. You don't have to verify the
11:18:36 7 time, but the individual who is now walking out of
11:18:38 8 the van, do you -- do you remember this individual?

11:18:44 9 A. I don't remember.

11:18:45 10 Q. Do you remember talking to that
11:18:47 11 individual on January 1st of 2017?

11:18:49 12 A. I do not.

11:18:55 13 Q. Do you remember what type of a call it
11:18:56 14 was that you responded to on January 1st of 2017,
11:19:01 15 at 33 Schmarbeck?

11:19:02 16 A. From the complaint summary report, it
11:19:04 17 was a larceny.

11:19:05 18 Q. Do you remember anything about that
11:19:07 19 call besides what's written on the complaint
11:19:09 20 summary report?

11:19:09 21 A. I don't.

11:19:12 22 Q. Do you remember how that call was
11:19:14 23 initiated?

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11:19:16 1 A. I -- I -- I don't. It says that it was
11:19:18 2 dispatched.

11:19:21 3 Q. And dispatched refers to you accepting
11:19:23 4 the call and going to that call, correct?

11:19:25 5 A. Yes.

11:19:26 6 Q. But the 911 call was made by the
11:19:28 7 individual, Mike Wolfe?

11:19:29 8 MS. HUGGINS: Form.

11:19:30 9 THE WITNESS: I don't know if it was Mike
11:19:34 10 Wolfe, but someone -- someone called 911.

11:19:37 11 BY MR. DAVENPORT:

11:19:38 12 Q. If I told you that the individual who
11:19:39 13 made the call was Mike Wolfe, would you have any
11:19:41 14 reason to dispute what I say?

11:19:44 15 MS. HUGGINS: Form.

11:19:46 16 BY MR. DAVENPORT:

11:19:46 17 Q. Would you have any reason to believe
11:19:48 18 that it was somebody besides Mike Wolfe?

11:19:49 19 MS. HUGGINS: Form.

11:19:50 20 THE WITNESS: No, but I also don't remember.

11:19:58 21 MR. DAVENPORT: All right.

11:20:01 22 MS. HUGGINS: Do you want to indicate for
11:20:02 23 the record what exhibit you've played?

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11:20:05 1 MR. DAVENPORT: Yes.

11:20:05 2 So for the record, I played the first video
11:20:08 3 of Exhibit A that was turned over to the City as
11:20:10 4 part of our complaint. The last four digits of
11:20:16 5 that video file -- can you go back to it, please?

11:20:23 6 The last four digits of that video file are
11:20:25 7 5252.

11:20:28 8 We are now turning to the second video file
11:20:31 9 of Exhibit A that was provided to the City as part
11:20:35 10 of the plaintiff's complaint. The last four digits
11:20:40 11 are 1342.

11:20:43 12 MS. HUGGINS: The exhibit number, just for
11:20:45 13 the purposes of the deposition.

11:20:46 14 MR. DAVENPORT: This exhibit number is
11:20:48 15 Exhibit number 11.

11:20:51 16 MS. HUGGINS: Thank you.

11:20:59 17 (Video clip played.)

11:20:59 18 BY MR. DAVENPORT:

11:20:59 19 Q. Do you see the three digits that are on
11:21:02 20 top of that police vehicle?

11:21:03 21 A. Yeah. It's kind of clear.

11:21:07 22 Q. And what are those three digits?

11:21:12 23 A. I know the -- I know the truck to be

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11:21:15 1 532.

11:21:16 2 Oh, that's clear now. Yeah, 532.

11:21:18 3 Q. Do you recognize that police vehicle?

11:21:19 4 A. Yes.

11:21:20 5 Q. And what do you recognize it as?

11:21:22 6 A. Buffalo Police vehicle.

11:21:24 7 Q. Have you ever been in that vehicle
11:21:26 8 before?

11:21:26 9 A. Yes.

11:21:28 10 Q. How many times before January 1st?

11:21:31 11 A. I'm -- yeah. I'm unsure.

11:21:33 12 Q. Were you in that vehicle after
11:21:36 13 January 1st of 2017?

11:21:37 14 A. Yeah.

11:21:39 15 Q. Was that a car that you would typically
11:21:41 16 use during your shifts at C District?

11:21:44 17 A. No. We -- we change depending on what
11:21:49 18 goes to the garage because it's broke.

11:21:51 19 Q. Okay. Was there a typical vehicle that
11:21:53 20 you would drive?

11:21:55 21 A. This was Karl's assigned truck.

11:22:00 22 Q. Okay. So Karl Schultz would typically
11:22:03 23 drive this truck then?

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11:22:04 1 A. Yeah. Yeah.

11:22:04 2 Q. So during your first 16 weeks of
11:22:06 3 training, this was the vehicle that you were using?

11:22:08 4 A. Unless it was at the garage, yes.

11:22:11 5 Q. Okay. Now, the video shows that you
11:22:15 6 drove past the red van at first. Do you know why
11:22:18 7 you drove past that red van?

11:22:20 8 A. I do not.

11:22:21 9 Q. The video also shows now, at 10:14, in
11:22:24 10 the top corner, that you were now backing up the
11:22:27 11 vehicle down Schmarbeck to where the red van is.
11:22:30 12 Do you know why you did that?

11:22:30 13 MS. HUGGINS: Form.

11:22:31 14 THE WITNESS: I don't.

11:22:32 15 BY MR. DAVENPORT:

11:22:33 16 Q. Were you going to this individual who
11:22:36 17 was out in the -- the sidewalk at this point?

11:22:39 18 A. I -- I don't remember, but it looks
11:22:43 19 that way.

11:22:47 20 Q. Now, you parked behind the red van.
11:22:49 21 Was there any reason that you would have done that?

11:22:53 22 A. Safety.

11:22:54 23 Q. And what would that safety reason have

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11:22:56 1 been?

11:22:58 2 A. I mean, so I can see someone in case
11:23:02 3 they're going to shoot me or something.

11:23:03 4 Q. Okay. And who would that person have
11:23:05 5 been?

11:23:06 6 MS. HUGGINS: Form.

11:23:07 7 THE WITNESS: Yeah. That -- that's just
11:23:09 8 a -- a general safety thing, so, I mean, I'm pretty
11:23:14 9 sure that that's the complainant for the call.

11:23:18 10 BY MR. DAVENPORT:

11:23:18 11 Q. Okay. So it wasn't necessarily that
11:23:20 12 you were driving behind the red van. You were
11:23:22 13 trying to get a visual on the individual who was
11:23:23 14 standing on the sidewalk, correct?

11:23:25 15 A. Yeah.

11:23:26 16 Q. Okay.

11:23:26 17 A. In the safest way.

11:23:27 18 Q. And that was a safety procedure?

11:23:30 19 A. Yeah.

11:23:30 20 Q. Was that something that Karl Schultz
11:23:32 21 told you to do?

11:23:33 22 A. I -- I don't think he told me to do
11:23:36 23 anything, no.

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11:23:37 1 Q. Was that part of your training with the
11:23:39 2 ECC, Erie County Training Academy?

11:23:43 3 A. No, not really.

11:23:43 4 Q. Was that part of your training with
11:23:45 5 Buffalo Police Academy?

11:23:48 6 A. No, not really.

11:23:49 7 Q. So was that something that you were
11:23:51 8 ever taught by ECC or the Buffalo Police Academy?

11:23:54 9 A. No.

11:23:55 10 Q. So that was just something that you did
11:23:56 11 on your own?

11:23:57 12 A. Yes.

11:23:57 13 Q. Okay. Who's that individual who's
11:24:01 14 getting out of the police vehicle?

11:24:03 15 A. Looks like it's me.

11:24:04 16 Q. Were you driving that day?

11:24:07 17 A. Yes.

11:24:08 18 Q. Did you drive the entire day, or did
11:24:10 19 Karl Schultz drive at any point?

11:24:13 20 A. I don't --

11:24:13 21 Q. On January 1st of 2017?

11:24:16 22 A. I don't know if I drove the whole day.

11:24:19 23 Q. During your first 16 weeks of training,

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11:24:21 1 who predominantly did most of the driving?

11:24:26 2 A. The whole 16 weeks, I would say
11:24:29 3 predominantly it was me.

11:24:30 4 Q. Okay. Was there any reason why you
11:24:32 5 drove instead of Karl?

11:24:34 6 A. So I can learn the streets.

11:24:36 7 Q. Okay. Did he give you any sort of
11:24:40 8 directions on where to go and how to go to a call?

11:24:42 9 A. Tons of directions.

11:24:44 10 Q. Okay. Do you have any sort of a GPS in
11:24:46 11 your vehicle?

11:24:48 12 A. They have a map on the computer that we
11:24:52 13 use, but we do not use it for GPS.

11:24:56 14 Q. Okay. What do you use that map for?

11:25:01 15 A. I -- I never used the map.

11:25:05 16 Q. Okay.

11:25:05 17 A. But people learn how to GPS calls that
11:25:09 18 way. You can also identify where other officers
11:25:12 19 are.

11:25:12 20 Q. Okay. So you had a pretty good
11:25:16 21 understanding of all the streets on C District and
11:25:18 22 you didn't use the map?

11:25:18 23 A. No, I didn't --

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11:25:19 1 MS. HUGGINS: Form.

11:25:20 2 THE WITNESS: I didn't have a good
11:25:21 3 understanding at all. Karl said it's better to
11:25:23 4 learn the streets by driving them rather than
11:25:27 5 GPS-ing them and staring at a computer.

11:25:29 6 BY MR. DAVENPORT:

11:25:29 7 Q. Okay. Would Karl then give you oral
11:25:32 8 directions of where to drive?

11:25:33 9 A. Yes.

11:25:33 10 Q. Okay. And you never referred to that
11:25:35 11 map during your first 16 weeks then?

11:25:39 12 A. I can't say never, but I was --

11:25:43 13 Q. Do you refer to that map at all?

11:25:44 14 MS. HUGGINS: Well --

11:25:45 15 MR. DAVENPORT: He said never.

11:25:46 16 MS. HUGGINS: I wasn't sure if he was
11:25:48 17 finished answering.

11:25:49 18 THE WITNESS: I can't say -- I can't say
11:25:50 19 never, but we really tried hard to stay away from
11:25:55 20 it.

11:25:56 21 BY MR. DAVENPORT:

11:25:57 22 Q. Okay. After your first 16 weeks, have
11:25:58 23 you ever used the map to go respond to a call?

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11:26:02 1 A. Not to respond to a call, but to find
11:26:05 2 out where an officer was.

11:26:06 3 Q. Okay. So now you're walking behind the
11:26:13 4 police vehicle; is that accurate?

11:26:15 5 A. Yeah.

11:26:15 6 Q. Was there any reason why you walked
11:26:17 7 behind the police vehicle rather than in front?

11:26:22 8 A. I don't -- I don't remember that day.

11:26:24 9 Q. Do you remember any difficulty with
11:26:26 10 walking on the Schmarbeck Drive that day?

11:26:30 11 MS. HUGGINS: Form.

11:26:31 12 THE WITNESS: Can you explain that?

11:26:33 13 BY MR. DAVENPORT:

11:26:34 14 Q. Was it icy? Was it slippery?

11:26:44 15 A. I don't remember.

11:26:45 16 Q. Okay.

11:26:46 17 A. I don't -- I don't remember.

11:26:47 18 Q. Okay. What kinds of shoes were you
11:26:50 19 wearing that day?

11:26:51 20 A. Boots.

11:26:52 21 Q. Boots?

11:26:53 22 Did you ever have difficulty walking on
11:26:55 23 streets with those boots?

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11:26:57 1 A. Sometimes.

11:26:58 2 Q. Sometimes?

11:26:58 3 And when would that be?

11:27:00 4 A. Like snow, icy, Buffalo conditions.

11:27:03 5 Q. Did you see any snow on the street that
11:27:05 6 day?

11:27:05 7 A. No.

11:27:06 8 Q. Any ice?

11:27:07 9 A. It's not that clear, but, yeah, I don't
11:27:13 10 know.

11:27:13 11 Q. But as you sit here today, you don't
11:27:16 12 remember any difficulty with walking that day,
11:27:18 13 correct?

11:27:18 14 A. No. There was no -- not for me.

11:27:20 15 Q. Okay. Now, it seems that you are
11:27:28 16 approaching the individual who is standing on the
11:27:30 17 sidewalk; is that correct?

11:27:31 18 A. Yes.

11:27:31 19 Q. Why is it just you that is going out to
11:27:34 20 go speak with that individual?

11:27:38 21 A. Excuse me. I -- I don't remember.

11:27:42 22 I think Karl was letting me deal with a low-priority
11:27:46 23 call.

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11:27:47 1 Q. And how was that determined to be a
11:27:49 2 low-priority call?

11:27:52 3 A. I mean, there's a lot of variables.
11:27:55 4 You look at officer safety. There's -- it -- it
11:27:58 5 says right here priority 5, whereas a shooting
11:28:01 6 would be priority 1.

11:28:02 7 Q. Sure.

11:28:03 8 A. Things like that.

11:28:04 9 I'm not saying that a priority 5 can't go in
11:28:08 10 a southern direction, but assessing the video and
11:28:14 11 assessing the scene, you can kind of determine.

11:28:18 12 Q. Now, prior to January 1st, 2017, have
11:28:22 13 you ever -- had you ever responded to a call on
11:28:24 14 Schmarbeck and spoken with this individual?

11:28:26 15 A. I don't -- I don't remember.

11:28:28 16 Q. Do you recall if after January 1st,
11:28:33 17 2017, did you ever respond to a call on Schmarbeck
11:28:35 18 and speak with this individual?

11:28:36 19 A. No.

11:28:37 20 Q. Now, at this point you know that you're
11:28:39 21 responding to a larceny or a theft, correct?

11:28:42 22 A. Yes.

11:28:43 23 Q. What's part of the normal procedure for

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11:28:46 1 responding to a larceny or theft?

11:28:48 2 Is there a typical procedure that you would
11:28:49 3 follow?

11:28:50 4 MS. HUGGINS: Form.

11:28:54 5 THE WITNESS: I want to get the complainant's
11:28:55 6 name, date of birth, phone number, address, and
11:28:58 7 then find out the story of what had happened.

11:29:01 8 BY MR. DAVENPORT:

11:29:01 9 Q. And how would you get that information?

11:29:04 10 A. Just by talking to him.

11:29:06 11 Q. Would you have to get any sort of
11:29:08 12 identification or anything else to verify what the
11:29:11 13 complainant is telling you?

11:29:12 14 A. ID.

11:29:13 15 Q. ID? Is that typical?

11:29:15 16 A. Yes.

11:29:15 17 Q. Did you do that on this occasion?

11:29:18 18 A. I don't -- I don't remember.

11:29:20 19 Q. Would you have to look at the
11:29:22 20 license plate number for the vehicle? Would --
11:29:25 21 what would Karl Schultz be -- excuse me. Strike
11:29:28 22 that.

11:29:28 23 What would Karl Schultz be doing in the

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11:29:30 1 vehicle at this point?

11:29:31 2 MS. HUGGINS: Form.

11:29:31 3 THE WITNESS: I don't -- I don't know what
11:29:32 4 Karl Schultz could be doing right now.

11:29:34 5 BY MR. DAVENPORT:

11:29:34 6 Q. I'm not asking what could he be doing.
11:29:37 7 I would be asking more so what should he be doing,
11:29:40 8 if he's not going out to go speak with the
11:29:42 9 individual?

11:29:42 10 MS. HUGGINS: Form.

11:29:43 11 THE WITNESS: I -- I think he's just letting
11:29:45 12 me -- me handle a low-priority call to see how I do
11:29:52 13 on it.

11:29:52 14 BY MR. DAVENPORT:

11:29:52 15 Q. Assuming --

11:29:53 16 A. And evaluate me. He's evaluating me.

11:29:56 17 Q. I'm sorry.

11:29:56 18 So assuming that he wasn't evaluating you
11:29:58 19 and that you were out with a partner, somebody
11:30:01 20 who's not in training, would two officers go speak
11:30:06 21 with the individual or would just one officer go
11:30:09 22 speak with the individual?

11:30:09 23 MS. HUGGINS: Form.

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11:30:10 1 THE WITNESS: I -- I'm not going to assume.
11:30:14 2 There's a bunch of different variables that can be
11:30:19 3 taken into place -- or can be taken into
11:30:22 4 consideration for various different calls.

11:30:24 5 BY MR. DAVENPORT:

11:30:24 6 Q. Okay. What types of various
11:30:27 7 circumstances would there be?

11:30:29 8 Would it be based off of the priority of the
11:30:31 9 call?

11:30:34 10 You know, I guess what other variables
11:30:34 11 would you --

11:30:34 12 A. It --

11:30:36 13 Q. -- take into consideration?

11:30:37 14 A. It could be --

11:30:38 15 MS. HUGGINS: Form.

11:30:39 16 THE WITNESS: It could be based off the
11:30:41 17 priority of the call. It could be based off the
11:30:44 18 complainant's actions. It could be based off of
11:30:48 19 third-, fourth-, fifth-party people that are
11:30:51 20 on scene.

11:30:53 21 BY MR. DAVENPORT:

11:30:53 22 Q. If there's one individual complainant,
11:30:56 23 would it be typical for one police officer to go

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11:30:59 1 respond to that individual rather than two police
11:31:02 2 officers for a priority 5 larceny/theft?

11:31:05 3 MS. HUGGINS: Form.

11:31:05 4 THE WITNESS: No. I've done both depending
11:31:10 5 on other variables.

11:31:13 6 BY MR. DAVENPORT:

11:31:13 7 Q. Was there any reason why, on January 1st,
11:31:17 8 2017, there was only one officer that responded and
11:31:19 9 went out to go talk with that individual?

11:31:22 10 A. I don't -- I don't remember why I was
11:31:25 11 the only one that -- that got out --

11:31:29 12 Q. But --

11:31:29 13 A. -- of the vehicle.

11:31:30 14 Q. -- at this point, what kind of
11:31:33 15 information besides that basic information are you
11:31:36 16 trying to get from this complainant?

11:31:38 17 A. Just -- just the basic info.

11:31:40 18 Q. Would you be asking him any details
11:31:42 19 about what his complaint is?

11:31:45 20 MS. HUGGINS: Form.

11:31:49 21 THE WITNESS: Yeah. I would say that
11:31:50 22 I would be asking him about details about what had
11:31:54 23 happened to him.

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11:31:54 1 BY MR. DAVENPORT:

11:31:54 2 Q. Do you remember if this individual told
11:31:56 3 you -- told you any details about what his
11:31:59 4 complaint was?

11:31:59 5 A. I don't. I don't remember.

11:32:08 6 Q. Do you know what he was pointing to,
11:32:10 7 that individual complainant?

11:32:12 8 A. I don't.

11:32:19 9 Q. Was there any reason why you were still
11:32:21 10 standing on the street, away from the individual on
11:32:25 11 the sidewalk?

11:32:26 12 A. Safety.

11:32:27 13 Q. And what would those safety reasons be?

11:32:31 14 A. When someone's really close to you,
11:32:32 15 they can punch you or stab you.

11:32:56 16 Q. Do you remember if Karl Schultz was
11:32:57 17 saying anything from the police vehicle at this
11:32:59 18 time?

11:32:59 19 A. I don't remember.

11:32:59 20 Q. Can you see if his window is up or down
11:33:01 21 at this time?

11:33:02 22 A. No, not -- no, I can't.

11:33:08 23 Q. Do you remember if his window was up or

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11:33:10 1 down at this time?

11:33:11 2 A. I don't.

11:33:14 3 Q. Do you remember if Karl Schultz was
11:33:17 4 giving you any sort of directions on how to handle
11:33:19 5 the call?

11:33:20 6 A. I don't remember.

11:33:33 7 Q. Now, at the time 10:15:11, there's
11:33:36 8 a second police vehicle arriving. Do you agree
11:33:38 9 with that?

11:33:38 10 A. Yes.

11:33:41 11 Q. Do you happen to --

11:33:42 12 MS. HUGGINS: Form.

11:33:43 13 BY MR. DAVENPORT:

11:33:45 14 Q. Do you agree that there is a second
11:33:47 15 police vehicle arriving at this time?

11:33:49 16 A. Yes.

11:33:49 17 Q. Do you know who the two police officers
11:33:52 18 were in that police vehicle?

11:33:54 19 A. At -- at the time, I believe I just met
11:33:58 20 them.

11:33:59 21 Q. Okay. Do you remember, as you sit here
11:34:03 22 today, who was in that police vehicle?

11:34:05 23 A. As I sit here today, yes.

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11:34:06 1 Q. Who are those two individuals?

11:34:08 2 A. Lauren McDermott and Jenny Velez.

11:34:10 3 Q. Did you have any prior conversations

11:34:12 4 with them before January 1st of 2017?

11:34:15 5 A. No. I -- I just met them this day.

11:34:18 6 Q. Okay. Did you meet them on this first

11:34:20 7 initial call?

11:34:21 8 A. No. I believe I met them on Sattler.

11:34:25 9 Q. Okay. So they were with you at a prior

11:34:29 10 call then, according to -- what exhibit is it?

11:34:35 11 A. 7.

11:34:35 12 Q. -- Exhibit 7, that would have been at

11:34:40 13 8:02 a.m.; is that correct?

11:34:43 14 MS. HUGGINS: Form.

11:34:44 15 THE WITNESS: Looks like 6:51.

11:34:49 16 BY MR. DAVENPORT:

11:34:49 17 Q. Excuse me. I didn't realize that there

11:34:51 18 were two of them.

11:34:54 19 Did you see them when you went back to

11:34:56 20 Sattler at 8:02 a.m.?

11:35:01 21 A. I don't remember if -- it was -- it was

11:35:04 22 during that call, so --

11:35:07 23 Q. It was during the 6:51 a.m. call?

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11:35:09 1 A. Yeah, it was during the 6:51.

11:35:12 2 Q. Okay. Did you speak both with Lauren
11:35:14 3 McDermott and Jenny Velez at that time?

11:35:16 4 A. Nothing beyond an introduction.

11:35:18 5 Q. Okay. Who were the primary officers on
11:35:21 6 that call?

11:35:22 7 A. That was --

11:35:23 8 MS. HUGGINS: Form.

11:35:23 9 THE WITNESS: Yeah. I'd have to see the CAD
11:35:26 10 on that.

11:35:27 11 BY MR. DAVENPORT:

11:35:27 12 Q. Okay.

11:35:28 13 A. Yeah. I'd have to see the -- the
11:35:30 14 complaint summary -- summary report on that.

11:35:32 15 Q. Was it you and Karl Schultz?

11:35:34 16 A. I would -- I would have to see the
11:35:38 17 complaint summary report. I know we were the first
11:35:41 18 ones on scene for that.

11:35:42 19 Q. Okay. Were Jenny Velez and Lauren
11:35:48 20 McDermott -- were they driving around at that time,
11:35:52 21 or were they dispatched to that call?

11:35:54 22 MS. HUGGINS: Form.

11:35:55 23 THE WITNESS: I don't know if they were

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11:35:58 1 driving around or not. I -- yeah, I can't speak on
11:36:07 2 what they were -- what they were doing.

11:36:08 3 And I don't remember if -- if they were
11:36:10 4 dispatched or not. I would need to see the summary
11:36:12 5 report for that.

11:36:13 6 BY MR. DAVENPORT:

11:36:14 7 Q. Okay. Besides introductions, did you
11:36:16 8 have any sort of a conversation with Lauren
11:36:19 9 McDermott and Jenny Velez?

11:36:20 10 A. No.

11:36:20 11 Q. Okay. Besides 6:51 a.m., was the next
11:36:24 12 time that you saw Jenny Velez and Lauren McDermott
11:36:28 13 at 33 Schmarbeck?

11:36:33 14 A. I don't -- I don't remember.

11:36:35 15 Q. Okay. Now, at this time, you're still
11:36:41 16 speaking with the individual complainant, correct?

11:36:44 17 A. Yes.

11:36:46 18 Q. Were Lauren McDermott and Jenny Velez,
11:36:48 19 were they saying anything to you at this time?

11:36:51 20 A. I don't remember. It doesn't -- it
11:36:53 21 doesn't look that way, but I don't remember.

11:36:55 22 Q. Would they have also been evaluating
11:36:57 23 how you responded to the call?

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11:36:58 1 MS. HUGGINS: Form.

11:36:59 2 THE WITNESS: Not an official form of
11:37:02 3 evaluation like Karl.

11:37:04 4 BY MR. DAVENPORT:

11:37:05 5 Q. Okay. Would it be an informal
11:37:06 6 evaluation?

11:37:08 7 A. I don't know if they were evaluating me
11:37:10 8 or not.

11:37:11 9 Q. Okay. What type of an evaluation would
11:37:14 10 Karl Schultz do?

11:37:15 11 Would it just be what he sees, or would he
11:37:18 12 also have to put together some sort of
11:37:21 13 documentation?

11:37:22 14 A. Every day of the 16 weeks, there was
11:37:26 15 a form that he filled out at the end of the -- the
11:37:29 16 shift. There was an evaluation form.

11:37:32 17 Q. Would that evaluation form take into
11:37:34 18 account each of the calls that you made that day,
11:37:36 19 or would it only take into account certain calls
11:37:39 20 that you responded to?

11:37:40 21 A. No. Every call.

11:37:40 22 Q. Every call?

11:37:42 23 Now, you would have taken the background

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11:37:46 1 information for this individual. Would you then go
11:37:50 2 report that background information to Karl Schultz
11:37:52 3 in the car?

11:37:56 4 A. Yeah.

11:37:56 5 Q. Did you do that on this occasion?

11:38:02 6 A. I don't -- I don't remember.

11:38:03 7 Q. Would there be any reason to not report
11:38:05 8 that information to Karl Schultz?

11:38:08 9 A. No, there wouldn't be any reason.

11:38:10 10 Q. Would that be normal police procedure
11:38:13 11 is to take the background information and go report
11:38:15 12 it back to the officer who's in the car?

11:38:17 13 MS. HUGGINS: Form.

11:38:18 14 THE WITNESS: To a field training officer,
11:38:19 15 yes.

11:38:21 16 BY MR. DAVENPORT:

11:38:21 17 Q. Do you remember, did you report that
11:38:24 18 information to Jenny Velez or Lauren McDermott?

11:38:28 19 A. No, I wouldn't -- I wouldn't report it
11:38:30 20 to them. I would report it to Karl.

11:38:46 21 Q. Now, at this moment, you've walked back
11:38:48 22 to the police vehicle, correct?

11:38:49 23 A. Yes.

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11:38:50 1 Q. Did you see yourself, prior to this,
11:38:53 2 grabbing anything from the individual?

11:38:56 3 A. No.

11:39:00 4 Q. But you would have checked his ID or
11:39:02 5 verified his background information with some sort
11:39:05 6 of documentation, correct?

11:39:06 7 MS. HUGGINS: Form.

11:39:06 8 THE WITNESS: I don't know if I verified it
11:39:08 9 or not.

11:39:09 10 BY MR. DAVENPORT:

11:39:09 11 Q. Okay. Would there be any reason to not
11:39:13 12 verify his background information?

11:39:15 13 A. One of the -- I mean, one of the
11:39:17 14 reasons why I'm being evaluated is to make sure
11:39:20 15 I started doing those things, so maybe I -- maybe
11:39:22 16 I didn't do it on scene.

11:39:23 17 Q. Would Karl Schultz have told you -- if
11:39:26 18 you did or did not ask for that ID, would he have
11:39:30 19 told you to go back and get the ID from the
11:39:32 20 individual?

11:39:32 21 A. Yeah, he would have told me.

11:39:34 22 Q. Did he tell you on this occasion?

11:39:36 23 A. I have no idea.

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11:39:36 1 MR. DAVENPORT: So I'm playing the video
11:39:38 2 back, and I want you to see if you did or did not
11:39:41 3 ever grab anything -- any item whatsoever from this
11:39:45 4 individual.

11:39:45 5 (Video clip played.)

11:39:45 6 BY MR. DAVENPORT:

11:40:38 7 Q. Mr. Moriarity, before you went back to
11:40:40 8 your police vehicle, did you ever grab any items or
11:40:42 9 any identification from that individual?

11:40:43 10 A. No.

11:40:45 11 Q. I want you to watch after you've gone
11:40:47 12 back to the police vehicle and spoken -- are you
11:40:49 13 speaking now with Karl Schultz?

11:40:50 14 A. Yes.

11:40:52 15 Q. I want you to now watch and see if you
11:40:53 16 ever go back to the individual to grab any sort of
11:40:56 17 identification.

11:41:08 18 Now, Officer Moriarity, I just also want to
11:41:10 19 ask you very quickly: Why did Lauren McDermott and
11:41:13 20 Jenny Velez pull up their vehicle directly behind
11:41:16 21 that minivan?

11:41:18 22 MS. HUGGINS: Form.

11:41:18 23 THE WITNESS: I have no idea.

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11:41:19 1 BY MR. DAVENPORT:

11:41:19 2 Q. Would there be any Buffalo Police
11:41:21 3 procedure reason why they would have to pull up
11:41:23 4 their vehicle at that time?

11:41:25 5 A. No. I don't know.

11:41:28 6 Q. No safety reasons or anything like
11:41:30 7 that? Okay.

11:41:33 8 MS. HUGGINS: She just needs a verbal
11:41:34 9 answer.

11:41:34 10 THE WITNESS: I'm sorry. I'm -- I'm unsure
11:41:36 11 why they -- why they pulled up their vehicle, if
11:41:38 12 for a safety reason, maybe they were listening,
11:41:41 13 maybe they wanted to hear what I was saying or what
11:41:43 14 the complainant was saying, maybe the complainant
11:41:46 15 was talking to them, maybe Karl was talking to
11:41:48 16 them.

11:41:49 17 BY MR. DAVENPORT:

11:41:49 18 Q. Okay.

11:41:49 19 A. I don't know.

11:41:50 20 Q. All right. Now, Mr. Moriarity, would
11:41:58 21 you agree that at this time, you were talking with
11:42:00 22 the driver of that second police vehicle, or at
11:42:04 23 least standing next to the window of that?

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11:42:06 1 A. I'm standing somewhere in between the
11:42:08 2 two vehicles, yes.

11:42:09 3 Q. Are you facing the second police
11:42:11 4 vehicle?

11:42:12 5 A. It looks that way, yeah.

11:42:13 6 Q. Would there be any reason to stand
11:42:16 7 facing the direction of that police vehicle besides
11:42:19 8 speaking to the driver of that second police
11:42:21 9 vehicle?

11:42:22 10 MS. HUGGINS: Form.

11:42:23 11 THE WITNESS: I mean, if they were talking
11:42:24 12 to me, I'm -- I'm acknowledging the fact that they
11:42:28 13 were talking to me and I'm saying something in
11:42:31 14 response.

11:42:32 15 BY MR. DAVENPORT:

11:42:32 16 Q. Do you remember any details of that
11:42:34 17 conversation?

11:42:35 18 MS. HUGGINS: Form.

11:42:35 19 THE WITNESS: No.

11:42:36 20 BY MR. DAVENPORT:

11:42:36 21 Q. They wouldn't have been giving you any
11:42:39 22 directions on how to handle that call?

11:42:40 23 A. I don't even know if we're -- I don't

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11:42:43 1 know what we're talking about, so no.

11:42:45 2 Q. But there would be no reason why they
11:42:47 3 would give you directions on how to handle the call
11:42:49 4 correctly, correct?

11:42:51 5 A. They could be.

11:43:06 6 Q. Now, Mr. Moriarity, after you went back
11:43:08 7 to the police vehicle, you did not see yourself
11:43:11 8 check the identification of that individual,
11:43:12 9 correct?

11:43:13 10 MS. HUGGINS: Form.

11:43:14 11 THE WITNESS: With the video provided, I --
11:43:20 12 the one that we just watched, I did not go back to
11:43:22 13 the complainant.

11:43:23 14 BY MR. DAVENPORT:

11:43:23 15 Q. Would there be any sort of a document
11:43:25 16 that would say whether you checked the ID of that
11:43:28 17 individual or not?

11:43:32 18 A. No.

11:43:33 19 Q. Is there any sort of a document that's
11:43:36 20 generated for when you do check the ID of somebody?

11:43:43 21 A. No.

11:43:43 22 Q. What would be the reason for checking
11:43:45 23 the ID of somebody?

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11:43:46 1 MS. HUGGINS: Form.

11:43:47 2 THE WITNESS: The reason why I do it is to
11:43:50 3 make sure that I'm talking to the person that
11:43:52 4 they're claiming to be.

11:43:55 5 BY MR. DAVENPORT:

11:43:55 6 Q. And there's no sort of documentation
11:43:56 7 that comes back to verify that this is a valid
11:43:59 8 license or anything else to help you verify that
11:44:04 9 fact?

11:44:04 10 MS. HUGGINS: Form.

11:44:05 11 THE WITNESS: If I'm running someone's
11:44:07 12 license to see if they have a suspended license or
11:44:10 13 something, then yeah, there is, but, I mean, if I'm
11:44:13 14 just looking at an ID and seeing if that's the
11:44:17 15 person that's on the ID, then no, there's no --
11:44:20 16 there's no form.

11:44:21 17 BY MR. DAVENPORT:

11:44:21 18 Q. Okay. So you would only check at that
11:44:22 19 point if there was a suspended license, correct?

11:44:27 20 That would be the only time a document is
11:44:28 21 generated?

11:44:29 22 MS. HUGGINS: Form.

11:44:31 23 THE WITNESS: I just want -- I just want to

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11:44:34 1 be clear. It's not -- there's no document that's
11:44:37 2 generated. It just shows up on our computer, the
11:44:40 3 person's info, when we type in their -- their
11:44:44 4 license. There's no -- there's no document that is
11:44:47 5 spit out of a computer or anything like that.

11:44:53 6 MR. DAVENPORT: Now, as part of -- and you
11:44:55 7 can turn the camera back towards the witness.

11:45:00 8 Could we also maybe just go off the record
11:45:02 9 just to get the lights back on?

11:45:02 10 THE VIDEOGRAPHER: Yes.

11:45:02 11 MR. DAVENPORT: Okay.

11:45:02 12 (A recess was then taken at 11:45 a.m.)

11:46:26 13 (On the record at 11:46 a.m.)

11:46:26 14 BY MR. DAVENPORT:

11:46:26 15 Q. Now, Mr. Moriarity, we just
11:46:28 16 watched a video of you responding to the call
11:46:31 17 at 33 Schmarbeck. At this time, you would have
11:46:33 18 asked the individual for his background
11:46:37 19 information.

11:46:39 20 Now, at this time, do you -- do you recall
11:46:45 21 what you did after going back to go talk with Karl
11:46:51 22 Schultz?

11:46:52 23 Did you go back to go speak with the

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11:46:53 1 complaint?

11:46:54 2 MS. HUGGINS: Form.

11:46:54 3 THE WITNESS: No, I don't remember.

11:46:55 4 BY MR. DAVENPORT:

11:46:55 5 Q. Do you remember going into the house at
11:46:58 6 that time?

11:46:58 7 A. No, I don't.

11:46:59 8 Q. Okay.

11:47:00 9 A. No.

11:47:01 10 Q. Would there be any sort of a document
11:47:03 11 or some sort of a recording or anything else that
11:47:05 12 would help to refresh your recollection?

11:47:09 13 A. If I went back into the house?

11:47:11 14 Q. If you went back into the house.

11:47:12 15 A. I -- I -- I never -- I don't think
11:47:14 16 I went in the house. But no, I mean, there
11:47:18 17 wouldn't -- there wouldn't be a -- a paper that
11:47:20 18 would say that I did.

11:47:23 19 Q. Now, prior to this occasion on
11:47:26 20 January 1st, have you ever responded to a call
11:47:29 21 where a tenant had stole property from a landlord?

11:47:33 22 A. I don't -- I don't know. I don't
11:47:35 23 remember.

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11:47:35 1 Q. Have you ever responded to one of those
11:47:37 2 types of calls after January 1st of 2017?

11:47:41 3 A. Yes.

11:47:42 4 Q. How many of those types of calls where
11:47:45 5 a tenant stole property from a landlord?

11:47:48 6 A. I don't -- I don't know an approximate
11:47:50 7 number. Not as often as you think.

11:47:56 8 Q. Would it be more or less than ten?

11:48:00 9 A. Over three years, probably more.

11:48:02 10 Q. Would it be more or less than 50?

11:48:06 11 A. Over three years, probably around that
11:48:09 12 maybe.

11:48:11 13 Q. Okay. Did you ever respond to a call
11:48:13 14 on Schmarbeck Avenue where a tenant stole property
11:48:16 15 from a landlord?

11:48:19 16 A. I don't remember if that was the nature
11:48:21 17 of this call, but I -- I haven't had many calls on
11:48:27 18 Schmarbeck, so --

11:48:29 19 Q. Did you ever respond to a call where an
11:48:31 20 individual was walking out with appliances from
11:48:35 21 their apartment that belonged to the landlord?

11:48:41 22 A. I -- no, I don't -- I don't remember.

11:48:43 23 Q. Would you agree with me that if

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11:48:44 1 an individual wanted to take appliances from
11:48:48 2 a landlord, they would need to drive a large
11:48:50 3 vehicle?

11:48:50 4 MS. HUGGINS: Form.

11:48:52 5 THE WITNESS: Yeah, I mean, I don't -- just
11:49:01 6 to pull appliances out of a house and put them in
11:49:03 7 a -- in a vehicle and drive off, I would say that's
11:49:08 8 probably smart to have a big vehicle.

11:49:12 9 BY MR. DAVENPORT:

11:49:12 10 Q. At this time did you know if the
11:49:14 11 individual that you were speaking to at
11:49:16 12 33 Schmarbeck was a tenant or if he owned the
11:49:20 13 property?

11:49:22 14 A. I -- I do not remember the nature of
11:49:25 15 the -- the call and what was said between me and
11:49:28 16 the complainant for 33.

11:49:30 17 Q. Any of those instances that you
11:49:32 18 responded to a tenant who was stealing property
11:49:37 19 from a landlord, were there ever any times where
11:49:39 20 the crime was actually in progress at the time of
11:49:43 21 you responding to that call?

11:49:44 22 A. No.

11:49:44 23 Q. Have you ever witnessed a tenant taking

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11:49:48 1 property from a police -- from a landlord, whether
11:49:51 2 that be in your personal capacity or official
11:49:53 3 capacity?

11:49:55 4 MS. HUGGINS: Form.

11:49:55 5 THE WITNESS: I wouldn't -- yeah, no,
11:49:58 6 I don't think so.

11:49:58 7 BY MR. DAVENPORT:

11:49:59 8 Q. Now, at this time, did you know if
11:50:01 9 the individual had a valid driver's license at
11:50:05 10 33 Schmarbeck?

11:50:06 11 A. From -- from the video that you played
11:50:09 12 for me, I don't -- I didn't see myself on there
11:50:12 13 ever checking his ID, so I don't really know if
11:50:15 14 I did check his ID or not.

11:50:17 15 Q. As part of your normal procedure for
11:50:21 16 responding to a -- an accusation of larceny or
11:50:25 17 theft, would you ever have to check the license
11:50:28 18 plate on a -- a vehicle that is at the location --

11:50:28 19 A. If --

11:50:32 20 Q. -- of the --

11:50:33 21 A. If it's apparent that the vehicle was
11:50:36 22 involved, then yes.

11:50:39 23 Q. Do you recall if on January 1st of 2017,

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11:50:42 1 you had checked the license plate of that red van?

11:50:45 2 A. I don't remember.

11:50:46 3 Q. Would there be any sort of a document
11:50:49 4 that would depict whether you had checked the
11:50:52 5 license of that red van or not?

11:50:58 6 A. I would say -- I would say no.

11:51:04 7 I don't -- I mean, just by the video, again,
11:51:08 8 I don't know if I -- I don't know what the rest
11:51:09 9 of the video showed, so I don't remember if -- if
11:51:14 10 I did anything else with the complainant.

11:51:18 11 Q. Do you recall, as you sit here today,
11:51:22 12 or do you know, as you sit here today, whether that
11:51:24 13 red van belonged to the complainant or not?

11:51:26 14 A. I do not know.

11:51:29 15 Q. So I'm going to ask you a few questions
11:51:32 16 about what happened immediately after that call to
11:51:35 17 33 Schmarbeck.

11:51:38 18 Do you recall an individual walking out into
11:51:44 19 the street after you responded to that call at
11:51:46 20 33 Schmarbeck?

11:51:46 21 MS. HUGGINS: Form.

11:51:47 22 THE WITNESS: The videos that we reviewed,
11:51:51 23 yes, I remember, based off the videos we reviewed.

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11:51:54 1 BY MR. DAVENPORT:

11:51:54 2 Q. But that's only based off of what you
11:51:56 3 saw in the videos?

11:51:59 4 A. Yeah, I mean, I don't -- again, this
11:52:01 5 was a very, very long time ago, and I was very new.

11:52:06 6 Q. As you sit here today, do you know who
11:52:08 7 that individual was that's depicted in the video
11:52:11 8 walking out in the street?

11:52:12 9 MS. HUGGINS: Form.

11:52:13 10 THE WITNESS: Yes.

11:52:13 11 BY MR. DAVENPORT:

11:52:14 12 Q. And who is that individual?

11:52:15 13 A. Mr. Kistner.

11:52:18 14 Q. Okay. Do you remember any of the
11:52:19 15 details of a conversation that could have been had
11:52:24 16 between you and Mr. Kistner or Mr. Schultz and
11:52:27 17 Mr. Kistner when he was out in the street?

11:52:30 18 A. I don't think I had a conversation with
11:52:34 19 Mr. Kistner.

11:52:35 20 Q. Did Mr. Schultz say anything to
11:52:39 21 Mr. Kistner?

11:52:41 22 A. No, I don't -- I don't -- I don't think
11:52:45 23 so. Not when we were trying to drive off.

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11:52:48 1 Q. Why were you trying to drive off as
11:52:51 2 there was an individual in the street?

11:52:53 3 MS. HUGGINS: Form.

11:52:54 4 THE WITNESS: At the time, he wasn't
11:52:57 5 involved with our call, so we were leaving.

11:52:59 6 BY MR. DAVENPORT:

11:52:59 7 Q. Did he ask to speak to the officers at
11:53:01 8 that time?

11:53:02 9 A. I don't know if he said anything to us.

11:53:04 10 Q. Do you know if he said anything to
11:53:06 11 Ms. McDermott or Ms. Velez?

11:53:11 12 A. I -- yeah, I don't know. I wouldn't --

11:53:13 13 MS. HUGGINS: Form.

11:53:13 14 THE WITNESS: I don't remember.

11:53:15 15 BY MR. DAVENPORT:

11:53:16 16 Q. Now, do you recall, as you sit here
11:53:20 17 today, even if it was the video that helped to
11:53:23 18 refresh your recollection, did you drive past the
11:53:25 19 individual who was out in the street?

11:53:27 20 A. I did drive past him, yeah.

11:53:29 21 Q. And how long were you driving -- how
11:53:31 22 far past that individual did you drive?

11:53:34 23 A. I don't remember how -- how far.

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11:53:36 1 Q. Even based off of the video that you
11:53:41 2 saw, would you know approximately how far that you
11:53:44 3 drove?

11:53:44 4 MS. HUGGINS: Form.

11:53:44 5 THE WITNESS: I can't -- I can't judge
11:53:46 6 distance like that.

11:53:47 7 BY MR. DAVENPORT:

11:53:48 8 Q. Do you know approximately how fast you
11:53:49 9 were driving?

11:53:49 10 A. I -- I don't know how fast I was
11:53:51 11 driving. I know from -- it's a small street.
11:53:56 12 I can't get up too high in speeds.

11:53:59 13 Q. How long is Schmarbeck Avenue?

11:54:02 14 A. I wouldn't -- I wouldn't be able to
11:54:03 15 tell you that. It's a small city street, though.

11:54:06 16 Q. Okay. Is it a one way or a two way?

11:54:09 17 A. Two way.

11:54:11 18 Q. Were there any other cars that were
11:54:13 19 coming in the opposite direction from you?

11:54:15 20 MS. HUGGINS: Form.

11:54:16 21 THE WITNESS: I mean, from what the video
11:54:19 22 you guys have, it didn't show any.

11:54:23 23 BY MR. DAVENPORT:

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11:54:24 1 Q. It didn't show any other vehicles
11:54:26 2 coming in the opposite direction?

11:54:27 3 A. It didn't show any, yeah, coming in the
11:54:31 4 opposite direction, that I remember.

11:54:32 5 Q. Do you normally wear your seat belt as
11:54:36 6 you're driving?

11:54:38 7 A. Sometimes.

11:54:40 8 Q. And that's driving a police vehicle,
11:54:42 9 sometimes you wear a seat belt?

11:54:44 10 MS. HUGGINS: Form.

11:54:45 11 THE WITNESS: Yeah, sometimes.

11:54:46 12 BY MR. DAVENPORT:

11:54:47 13 Q. What situations would you wear
11:54:49 14 a seat belt?

11:54:51 15 MS. HUGGINS: Form.

11:54:55 16 THE WITNESS: Situations where I remember or
11:55:00 17 I think it's icy or something.

11:55:04 18 BY MR. DAVENPORT:

11:55:05 19 Q. As a police officer, are you required
11:55:06 20 to wear a seat belt?

11:55:10 21 MS. HUGGINS: Form.

11:55:13 22 THE WITNESS: I'm not sure actually if it's
11:55:15 23 in our Manual of Procedures.

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11:55:17 1 BY MR. DAVENPORT:

11:55:18 2 Q. Is it a violation of the New York
11:55:19 3 traffic law to not wear your seat belt?

11:55:22 4 A. It is a violation for moving cars,
11:55:24 5 yeah, but if you look up our New York State VTL,
11:55:30 6 we're exempt from doing a lot of things.

11:55:32 7 Q. Do you know if you are exempt from
11:55:34 8 wearing a seat belt?

11:55:35 9 A. I don't actually.

11:55:36 10 Q. Was that ever told to you by Karl
11:55:39 11 Schultz?

11:55:39 12 A. No.

11:55:39 13 Q. Was that told to you by any other
11:55:42 14 officer, that you were not -- that you were exempt
11:55:44 15 from wearing a seat belt?

11:55:45 16 A. No.

11:55:45 17 Q. Do you know if Karl Schultz was wearing
11:55:47 18 a seat belt on that day?

11:55:48 19 A. I don't know.

11:55:49 20 Q. Do you know if Jenny Velez and Lauren
11:55:52 21 McDermott were wearing a seat belt on that day?

11:55:54 22 A. They were in a different car. I don't
11:55:56 23 know.

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11:55:56 1 Q. With any of the other officers that you
11:55:58 2 have been with in their -- in the vehicle, have any
11:56:00 3 of those officers worn a seat belt in the police
11:56:03 4 vehicle that you were driving?

11:56:04 5 A. Yeah, some do.

11:56:05 6 MS. HUGGINS: Form.

11:56:06 7 BY MR. DAVENPORT:

11:56:08 8 Q. Now, when you were driving -- when you
11:56:13 9 typically go to go drive a vehicle, do you check
11:56:16 10 any of your mirrors before you pull away?

11:56:19 11 A. Yes.

11:56:19 12 Q. What mirrors do you check?

11:56:21 13 A. I check all of them because a lot of
11:56:23 14 people are different heights.

11:56:24 15 Q. Okay. Now, do you check your mirror to
11:56:27 16 see what's around you or just to make sure that you
11:56:30 17 are able to see and you have a good vantage point
11:56:33 18 for looking through your mirrors?

11:56:35 19 MS. HUGGINS: Form.

11:56:35 20 THE WITNESS: To make sure I have a good
11:56:37 21 vantage point and I can see other cars and people
11:56:40 22 and whatnot.

11:56:41 23 BY MR. DAVENPORT:

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11:56:42 1 Q. Okay. Do you check your left mirror?

11:56:43 2 Your driver's side mirror?

11:56:44 3 A. Yes.

11:56:44 4 Q. Do you check your passenger side

11:56:45 5 mirror?

11:56:45 6 A. Yes.

11:56:46 7 Q. And then do you check your rearview

11:56:48 8 mirror?

11:56:48 9 A. Yeah.

11:56:48 10 Q. Do you look behind you at all?

11:56:49 11 A. No. You can't really see because of

11:56:52 12 the cage.

11:56:52 13 Q. Okay.

11:56:53 14 A. It's a little difficult.

11:56:54 15 Q. Okay. After you make that initial

11:56:56 16 check, do you ever look at your driver's side

11:56:59 17 mirror, your passenger mirror, or your rearview

11:57:02 18 mirror, as you're driving forward?

11:57:03 19 A. Often.

11:57:04 20 Q. Often?

11:57:05 21 And what are you looking for typically?

11:57:08 22 A. Other cars and -- and people to see

11:57:11 23 what -- what they're doing.

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11:57:12 1 Q. Okay. On this occasion do you recall
11:57:16 2 if you looked into your driver's side mirror or
11:57:18 3 your passenger side mirror or your rearview mirror
11:57:22 4 as you were driving away?

11:57:22 5 MS. HUGGINS: Form.

11:57:24 6 THE WITNESS: I remember looking in my
11:57:26 7 driver's side mirror.

11:57:28 8 BY MR. DAVENPORT:

11:57:28 9 Q. Okay. And why were you looking at your
11:57:31 10 driver's side mirror?

11:57:32 11 A. Karl told me to -- he directed my
11:57:35 12 attention to the mirror and said, hold on; let's
11:57:39 13 make sure they get out okay.

11:57:42 14 Q. Okay. Did you stop your vehicle at
11:57:45 15 that point?

11:57:45 16 A. I don't -- I don't remember.

11:57:47 17 Q. Okay. Were you -- were you looking
11:57:52 18 only at your driver's side mirror at that point
11:57:54 19 when Karl said, let's hold on; let's wait to see if
11:57:57 20 they make it out okay?

11:57:59 21 A. In between that and looking forward.

11:58:01 22 Q. Okay. What was the reason for Karl
11:58:06 23 saying, let's make sure that they make it out okay?

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11:58:09 1 MS. HUGGINS: Form.

11:58:09 2 THE WITNESS: At the time, I'm too new.

11:58:12 3 I don't -- I was just doing what he told me --

11:58:15 4 BY MR. DAVENPORT:

11:58:15 5 Q. Okay.

11:58:16 6 A. -- to do.

11:58:17 7 Q. Okay. With your experience that you've

11:58:20 8 gained since this incident, would there be any

11:58:22 9 reason why Karl would have told you to make sure

11:58:25 10 that they make it out okay?

11:58:27 11 MS. HUGGINS: Form.

11:58:27 12 THE WITNESS: Yeah, I mean, there could have

11:58:29 13 been a whole bunch of reasons why someone would

11:58:31 14 walk up to a police vehicle, so for officer safety,

11:58:36 15 he would have told me to look out -- look out the

11:58:39 16 mirror.

11:58:39 17 BY MR. DAVENPORT:

11:58:39 18 Q. Do you know, on January 1st, why that

11:58:42 19 individual was walking up to a police vehicle?

11:58:43 20 MS. HUGGINS: Form.

11:58:44 21 THE WITNESS: I -- I don't. I don't know.

11:58:45 22 BY MR. DAVENPORT:

11:58:46 23 Q. Did Karl Schultz know why that

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11:58:49 1 individual was walking up to a police vehicle?

11:58:50 2 MS. HUGGINS: Form.

11:58:50 3 THE WITNESS: He didn't tell me. No, I don't
11:58:53 4 know.

11:58:53 5 BY MR. DAVENPORT:

11:58:53 6 Q. Do you remember Karl Schultz ever
11:58:55 7 saying, we're leaving, to that individual?

11:59:00 8 A. I -- I don't. I don't remember.

11:59:03 9 Q. Would you have any reason to think that
11:59:04 10 he didn't say, we're leaving?

11:59:08 11 A. Again, I don't -- I don't remember.
11:59:11 12 I don't remember what he said.

11:59:16 13 Q. Now, as Karl Schultz said, wait; let's
11:59:19 14 see what happens; let's make it out of there
11:59:21 15 okay -- let's make sure that they make it out of
11:59:23 16 there okay, were you still driving forward at that
11:59:29 17 time?

11:59:29 18 A. I don't know if I -- I don't remember
11:59:31 19 if I was stopped or slowing to a stop or continuing
11:59:38 20 straight.

11:59:39 21 Q. Okay. As you were driving away -- as
11:59:49 22 your vehicle was driving away from the incident,
11:59:52 23 did you see anything that was happening behind you?

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11:59:57 1 A. I remember having a conversation with
11:59:59 2 Karl about how it looked like Mr. Kistner threw
12:00:05 3 himself on the vehicle. I -- I can't remember
12:00:12 4 exactly how it looked because I was so new. I just
12:00:18 5 remember having the conversation with him.

12:00:19 6 Q. And where did you have that
12:00:21 7 conversation?

12:00:22 8 A. In the -- in the police vehicle.

12:00:24 9 Q. Okay. Would that have been before or
12:00:26 10 after you got out of the police vehicle after the
12:00:32 11 collision was made with Mr. Kistner?

12:00:34 12 MS. HUGGINS: Form.

12:00:34 13 THE WITNESS: That would have been before.

12:00:41 14 BY MR. DAVENPORT:

12:00:41 15 Q. Okay. So the collision would have
12:00:43 16 happened, you would have been in your police
12:00:44 17 vehicle, and Karl Schultz would have told you that
12:00:48 18 Mr. Kistner threw himself at the police vehicle?

12:00:50 19 MS. HUGGINS: Form.

12:00:50 20 THE WITNESS: Like I said, I remember having
12:00:53 21 a conversation talking about it. I don't -- I don't
12:00:54 22 remember if we both said it or if he just said it,
12:00:57 23 but the conversation took place, then we exited the

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12:00:59 1 vehicle, and walked back.

12:01:01 2 BY MR. DAVENPORT:

12:01:01 3 Q. Okay. How long did that conversation
12:01:02 4 last?

12:01:04 5 A. It probably didn't last very long, but
12:01:08 6 I don't know an approximate time.

12:01:11 7 Q. Did he happen to say what your next
12:01:13 8 steps should be at that point?

12:01:16 9 A. I don't remember. I just -- we just
12:01:19 10 got out, I think.

12:01:24 11 Q. Did you exit the police vehicle because
12:01:25 12 Karl Schultz exited the police vehicle?

12:01:27 13 A. Yes.

12:01:28 14 Q. Did he tell you to exit the police
12:01:30 15 vehicle?

12:01:30 16 A. No. I just did it because he did it.

12:01:32 17 Q. As you were walking back to the scene,
12:01:34 18 did you have any personal viewpoints on what had
12:01:40 19 happened at that point?

12:01:41 20 A. Can you -- can you explain that? What
12:01:44 21 do you mean?

12:01:44 22 Q. Did you happen to view yourself any of
12:01:46 23 the incident, or were you just going based off of

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12:01:49 1 what Karl Schultz told you?

12:01:50 2 A. No. We were -- we were both walking
12:01:52 3 back. We would have both seen Mr. Kistner.

12:01:59 4 Q. Where -- where would you have seen
12:02:01 5 Mr. Kistner as you were walking back?

12:02:03 6 MS. HUGGINS: Form.

12:02:03 7 THE WITNESS: On the ground.

12:02:04 8 BY MR. DAVENPORT:

12:02:05 9 Q. So I guess my question is: With what
12:02:08 10 Karl Schultz said, that Mr. Kistner threw himself
12:02:10 11 at the police vehicle, did you happen to watch any
12:02:13 12 of that incident unfold before you exited the
12:02:16 13 police vehicle?

12:02:17 14 A. Well, like I said, I -- I remember
12:02:19 15 having a short conversation with Karl about what
12:02:26 16 we -- what we saw from the mirror, but that would
12:02:31 17 have been it.

12:02:32 18 Q. So now you're saying, what we saw from
12:02:35 19 the mirror. Were you also looking at the driver's
12:02:37 20 side mirror when the collision was made with
12:02:39 21 Mr. Kistner?

12:02:39 22 A. Well, yeah, that's what I said. I said
12:02:42 23 I was looking in the driver's side mirror and

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12:02:43 1 then --

12:02:43 2 Q. And --

12:02:45 3 MS. HUGGINS: Well, let --

12:02:45 4 THE WITNESS: -- and then also looking
12:02:46 5 forward.

12:02:47 6 BY MR. DAVENPORT:

12:02:48 7 Q. Okay. So now you're -- you're looking
12:02:49 8 forward and looking at the driver's side mirror.
12:02:51 9 Were you looking at the driver's side mirror as the
12:02:53 10 collision was made?

12:02:54 11 MS. HUGGINS: Form.

12:02:54 12 THE WITNESS: I don't -- I don't remember.
12:02:58 13 In order for me to have the conversation with Karl,
12:03:03 14 I would say I was looking in the mirror at the
12:03:05 15 time.

12:03:06 16 BY MR. DAVENPORT:

12:03:06 17 Q. And did you have any sort of an opinion
12:03:09 18 of what happened?

12:03:11 19 MS. HUGGINS: Form.

12:03:11 20 THE WITNESS: From -- from my perspective
12:03:17 21 looking into the mirror, it looked as though he
12:03:20 22 threw himself on her vehicle.

12:03:23 23 BY MR. DAVENPORT:

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12:03:24 1 Q. And what led you to believe that
12:03:27 2 Mr. Kistner threw himself on the police vehicle?

12:03:29 3 A. Again, I don't -- all I remember was
12:03:33 4 having the conversation with Karl about his
12:03:36 5 approach to the vehicle, and then from our -- from
12:03:40 6 our perspective, our vehicle was straight down the
12:03:44 7 street, and then we were looking in the mirror, and
12:03:47 8 then her vehicle was -- I don't know the word --
12:03:52 9 just --

12:03:52 10 Q. Diagonal?

12:03:53 11 A. Diagonal, yeah. So it looked like he
12:03:56 12 threw himself on the vehicle.

12:03:57 13 Q. So besides the fact that Mr. Kistner
12:03:59 14 was walking towards the vehicle and her vehicle was
12:04:01 15 diagonal, what other things did you see that led
12:04:04 16 yourself to believe that Mr. Kistner threw himself
12:04:08 17 at the vehicle, rather than the vehicle colliding
12:04:10 18 with Mr. Kistner?

12:04:11 19 MS. HUGGINS: Form.

12:04:11 20 THE WITNESS: Again, long time ago. I was
12:04:13 21 very, very new, and from our -- from my perspective,
12:04:17 22 because I can't speak on Karl's perspective, from
12:04:19 23 my perspective, that's all I was going off of.

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12:04:23 1 BY MR. DAVENPORT:

12:04:23 2 Q. Were you going off of what Karl told
12:04:26 3 you, or were you going off of what you saw?

12:04:27 4 A. No, no, no. From -- from what I saw.
12:04:30 5 Like I said, from my perspective, that's what it
12:04:32 6 looked like. But, I mean, even as I sit here right
12:04:35 7 now, I can't remember what it looked like. It
12:04:38 8 was --

12:04:38 9 Q. Do you remember if the police vehicle
12:04:39 10 that Lauren McDermott or Jenny Velez, that they
12:04:42 11 were in, was that vehicle stopped or was it moving
12:04:46 12 at the time of the collision?

12:04:47 13 MS. HUGGINS: Form.

12:04:47 14 THE WITNESS: From -- from my perspective as
12:04:51 15 I was looking in the mirror, it appeared as though
12:04:53 16 it was stopped.

12:04:55 17 BY MR. DAVENPORT:

12:04:55 18 Q. How long, approximately, was it stopped
12:04:58 19 before that collision was made?

12:05:00 20 MS. HUGGINS: Form.

12:05:00 21 THE WITNESS: I -- I -- I can't judge time
12:05:03 22 like that, but the whole -- the whole incident
12:05:06 23 looked pretty quick.

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12:05:08 1 BY MR. DAVENPORT:

12:05:09 2 Q. Now, what part of Mr. Kistner's body
12:05:11 3 initially contacted the police vehicle?

12:05:14 4 A. I -- I don't remember.

12:05:16 5 Q. Do you recall if Mr. Kistner stuck his
12:05:18 6 arm out at all?

12:05:19 7 A. I don't.

12:05:20 8 Q. Do you recall how he fell to the
12:05:25 9 ground?

12:05:26 10 A. I remember having a conversation with
12:05:29 11 Karl about him squatting down, leaning back, and
12:05:36 12 then putting his hand on the ground, and then
12:05:39 13 completing the fall.

12:05:40 14 Q. Now --

12:05:41 15 A. But I don't -- I don't remember seeing
12:05:42 16 that because it was so long ago and I was so
12:05:45 17 brand new.

12:05:46 18 Q. Now, was that something that you saw
12:05:48 19 independently, or was that just something that Karl
12:05:50 20 said?

12:05:51 21 Because you're saying that we had it --

12:05:53 22 A. That was -- yeah. That -- well, that
12:05:54 23 was something that I saw and then had the

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12:05:57 1 conversation with Karl about. But, again, as I sit
12:06:02 2 here right now, I don't remember.

12:06:03 3 I mean, it -- it was -- like I said, it was
12:06:04 4 so long ago and I was so brand new.

12:06:06 5 Q. Okay. At the time of the incident, is
12:06:09 6 that what you believed was that Mr. Kistner stuck
12:06:12 7 his arm out and then fell to the ground, as the
12:06:15 8 police vehicle was stopped?

12:06:15 9 A. At the time of the incident, yes, that
12:06:17 10 is -- that is what I believe.

12:06:19 11 Q. Okay. Now, as Mr. Kistner's falling to
12:06:25 12 the ground, is your police vehicle stopped or is it
12:06:27 13 moving at that time?

12:06:28 14 A. I -- I don't remember.

12:06:30 15 Q. When approximately did you stop your
12:06:33 16 police vehicle?

12:06:35 17 A. I -- I don't remember when I stopped
12:06:38 18 it, if it was before the incident or after or
12:06:42 19 during.

12:06:42 20 Q. Did Karl ask you to stop the police
12:06:44 21 vehicle?

12:06:47 22 A. I don't remember if he asked me or not.
12:06:50 23 All I know is I did.

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12:06:51 1 Q. Did you back up the police vehicle
12:06:53 2 after?

12:06:54 3 A. Yes.

12:06:54 4 Q. Okay. Approximately how far did you
12:06:57 5 back up the police vehicle?

12:06:58 6 A. I can't judge distance like that.
12:07:00 7 I don't -- I don't -- I don't know. I don't even
12:07:02 8 know where I stopped it.

12:07:03 9 Q. Okay. Now, why did you back up the
12:07:07 10 police vehicle at that time?

12:07:08 11 A. I probably didn't want to walk very
12:07:11 12 far.

12:07:11 13 Q. Okay.

12:07:14 14 A. Or it was quicker.
12:07:16 15 Could have been either of those.

12:07:17 16 Q. Before you and Karl got out of the car,
12:07:19 17 were Jenny Velez or Lauren McDermott out of the
12:07:23 18 police vehicle?

12:07:23 19 A. Before -- before me and Karl got out of
12:07:25 20 the car?

12:07:26 21 Q. Before you and Karl got out of the car.

12:07:27 22 A. I -- I don't know.

12:07:28 23 Q. Okay.

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12:07:29 1 A. I couldn't -- I couldn't see who was --
12:07:32 2 who was doing what at that point in time. I was
12:07:35 3 focused on reversing.

12:07:36 4 Q. Now, as you were walking back towards
12:07:40 5 Mr. Kistner, were you and Karl having any sort of
12:07:42 6 a conversation?

12:07:43 7 A. I don't remember if we were or not.

12:07:45 8 Q. Okay. As you were walking back towards
12:07:49 9 the police vehicle, what did you notice about
12:07:52 10 Mr. Kistner?

12:07:54 11 A. As we were walking back towards Lauren
12:07:56 12 and --

12:07:57 13 Q. Yes. Back towards the second police
12:07:59 14 vehicle.

12:08:02 15 A. I just remember him being on the
12:08:03 16 ground.

12:08:05 17 Q. Was he saying anything at that time?

12:08:08 18 A. Don't remember.

12:08:09 19 Q. Do you remember any other individuals
12:08:11 20 besides Jim Kistner being out anywhere in that
12:08:16 21 police scene?

12:08:16 22 MS. HUGGINS: Form.

12:08:17 23 THE WITNESS: I don't know for sure if it

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12:08:21 1 was his son, but a young -- young male came out
12:08:26 2 from -- from that house.

12:08:27 3 BY MR. DAVENPORT:

12:08:27 4 Q. What led you to believe that it may
12:08:29 5 have been Mr. Kistner's son?

12:08:30 6 A. I don't -- I don't know if it was ever
12:08:38 7 said that it was his son, but he came out of the
12:08:41 8 same house that Mr. Kistner came out of.

12:08:43 9 Q. So you did see Mr. Kistner come out of
12:08:45 10 the house, the same house that that individual came
12:08:48 11 out of?

12:08:49 12 A. Yeah.

12:08:49 13 Q. Okay. Did you watch Mr. Kistner leave
12:08:53 14 that house initially?

12:08:55 15 A. It -- it wasn't too important enough
12:08:59 16 for me at the time. We were just leaving.

12:09:03 17 Q. Was -- were you in your police vehicle
12:09:06 18 when you saw Mr. Kistner first?

12:09:09 19 MS. HUGGINS: Form.

12:09:12 20 THE WITNESS: Yeah, I don't remember.

12:09:13 21 BY MR. DAVENPORT:

12:09:13 22 Q. Were you out in the street?

12:09:16 23 A. No. I would have been in the car.

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12:09:18 1 Q. Okay. And so how long approximately
12:09:21 2 was it, after you first saw Mr. Kistner, that you
12:09:24 3 then made it out into the street?

12:09:29 4 A. From when we were trying to leave, to
12:09:32 5 when I saw him come into the street? Is that what
12:09:35 6 you're saying?

12:09:36 7 Q. Well, I guess what you were telling me
12:09:38 8 is that you saw that Mr. Kistner walked out of the
12:09:40 9 same house that the second person came out of.

12:09:42 10 So I guess what my question is: After you
12:09:46 11 first saw Mr. Kistner come out of that house, how
12:09:48 12 long was it before he entered the street?

12:09:49 13 MS. HUGGINS: Form. You can answer.

12:09:50 14 THE WITNESS: I don't -- I don't -- I don't
12:09:57 15 know if I'd be able to judge that time. I'm -- I'm
12:10:01 16 thinking it was quick.

12:10:02 17 BY MR. DAVENPORT:

12:10:02 18 Q. Was it minutes or was it seconds?

12:10:05 19 A. Not many minutes.

12:10:07 20 Q. But you're thinking it would have been
12:10:10 21 minutes?

12:10:10 22 A. Like maybe one or maybe seconds.

12:10:14 23 Q. Okay.

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12:10:16 1 A. Yeah, I don't know.

12:10:17 2 Q. Do you know why you and Karl Schultz
12:10:20 3 would have been sitting in your police vehicle for
12:10:22 4 a few minutes after you first entered your police
12:10:25 5 vehicle?

12:10:26 6 MS. HUGGINS: Form.

12:10:26 7 THE WITNESS: I -- I don't remember.
12:10:29 8 He could have been giving me an on-the-spot
12:10:33 9 evaluation. We could have just been talking about
12:10:38 10 nothing. We could have been just sitting there.

12:10:42 11 And like I said, I don't remember what --
12:10:45 12 what all we did on the larceny at 33 Schmarbeck, so
12:10:50 13 we could have just been talking about that right
12:10:53 14 before we were leaving.

12:10:54 15 BY MR. DAVENPORT:

12:10:54 16 Q. Would that be something that he would
12:10:56 17 normally do is give you an on-the-spot evaluation?

12:10:58 18 A. Sometimes.

12:10:59 19 Q. Was that often or --

12:11:02 20 A. Over 16 weeks, yeah, I mean, sometimes
12:11:05 21 he would just be like: You did a good job, or,
12:11:08 22 hey, do this, do this better.

12:11:09 23 Q. What kinds of things would he ask you

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12:11:12 1 to -- you know, what kind -- sorry. Strike that.

12:11:15 2 What kinds of procedures would he point out
12:11:17 3 that you didn't possibly do correctly during your
12:11:20 4 training?

12:11:20 5 MS. HUGGINS: Form.

12:11:21 6 THE WITNESS: Well, like I said, basic
12:11:25 7 information, if you -- if you get their name, date
12:11:28 8 of birth, and phone number, maybe you forget
12:11:30 9 a phone number to write down or something or, you
12:11:34 10 know, something -- something small like that, he
12:11:37 11 would be like: Hey, go back out there and do this.
12:11:39 12 Or, hey, make sure you do this better next time.

12:11:44 13 BY MR. DAVENPORT:

12:11:44 14 Q. Now, would you have -- I'm sorry.
12:11:50 15 Strike that.

12:11:51 16 For -- when you were walking back towards
12:11:54 17 Mr. Kistner towards the police vehicle, you said
12:11:56 18 that you saw him on the ground, correct?

12:11:59 19 A. Yeah.

12:12:00 20 Q. Was he sitting up, or was he laying
12:12:02 21 down?

12:12:10 22 A. I think he was laying down, but
12:12:12 23 I can't -- I can't be too sure.

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12:12:15 1 Q. Okay.

12:12:16 2 A. Very long time ago.

12:12:17 3 Q. No. Sure. Sure.

12:12:20 4 Was he holding any part of his body at that

12:12:24 5 time?

12:12:24 6 A. I don't remember.

12:12:24 7 Q. Okay. Was he complaining about his

12:12:27 8 head hurting him?

12:12:27 9 A. I don't remember.

12:12:31 10 Q. Who was the first person that made it

12:12:34 11 to Mr. Kistner? Who first spoke to him?

12:12:36 12 MS. HUGGINS: Form.

12:12:38 13 THE WITNESS: I -- at this point in time, it

12:12:40 14 was not me, so I don't know who spoke to him first.

12:12:45 15 BY MR. DAVENPORT:

12:12:45 16 Q. Okay. Once somebody did speak to

12:12:52 17 Mr. Kistner, do you remember what was said to him?

12:12:54 18 A. No.

12:12:54 19 Q. What kinds of things would have been

12:12:56 20 said to him?

12:12:56 21 MS. HUGGINS: Form.

12:12:57 22 THE WITNESS: I'm -- I'm unsure of what type

12:13:00 23 of things could have or would have been said to

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12:13:05 1 him. Very new in a very chaotic situation.

12:13:09 2 I didn't do much but attempt to observe as much

12:13:13 3 as I could.

12:13:14 4 BY MR. DAVENPORT:

12:13:14 5 Q. And what were you trying to observe?

12:13:17 6 A. What other officers were -- were doing,

12:13:21 7 what Mr. Kistner was doing.

12:13:22 8 Q. Now, I understand that you were new at

12:13:24 9 the time --

12:13:24 10 A. Yeah.

12:13:24 11 Q. -- but based on the experience that

12:13:27 12 you've been able to gain, what should have been

12:13:29 13 done if there was an individual -- whether he threw

12:13:31 14 himself at the police vehicle or whether the police

12:13:33 15 vehicle struck him, if he was on the ground, what

12:13:36 16 should have been done next?

12:13:37 17 MS. HUGGINS: Form.

12:13:37 18 THE WITNESS: Well, I mean, it's not so much

12:13:40 19 as what should have been done, it's what we did.

12:13:42 20 And what we did was observe what had just taken

12:13:46 21 place in front of us, and then other senior

12:13:51 22 officers assessed what to do.

12:13:53 23 BY MR. DAVENPORT:

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12:13:53 1 Q. Okay. And was there any sort of an
12:13:54 2 assessment of any physical injuries or medical
12:13:57 3 conditions that he may have had?

12:14:00 4 A. Yeah. I mean, as we're -- as we were
12:14:02 5 walking up, you can -- you can assess the person as
12:14:07 6 they are visually in front of you.

12:14:12 7 You know, he didn't have bones sticking out.
12:14:17 8 There was no tons of blood or anything leaking out
12:14:21 9 anywhere. That was the assessment that I made.
12:14:24 10 I don't know what the other officers -- senior
12:14:28 11 officers did. Or observed. I'm sorry.

12:14:31 12 Q. Right.

12:14:32 13 Now, would it only take bones sticking out
12:14:35 14 or blood gushing all over the place for that person
12:14:37 15 to have a physical examination by a physician of
12:14:40 16 any injuries he may have had?

12:14:41 17 MS. HUGGINS: Form.

12:14:44 18 THE WITNESS: No, but we did take him to
12:14:46 19 ECMC.

12:14:46 20 BY MR. DAVENPORT:

12:14:46 21 Q. And how long, approximately, after he
12:14:49 22 had been on the ground, was he taken to ECMC?

12:14:51 23 A. I'm -- I'm unsure.

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12:14:53 1 Q. What would be the appropriate response
12:14:56 2 time for getting him to ECMC after a car -- a
12:14:59 3 collision with a car?

12:14:59 4 MS. HUGGINS: Form.

12:15:00 5 THE WITNESS: I -- I would say that there's --
12:15:03 6 the appropriate response time would be determined
12:15:08 7 by the actions of the person that was -- that was
12:15:12 8 hit and the officer's assessment.

12:15:15 9 BY MR. DAVENPORT:

12:15:15 10 Q. Now, why would the actions of the
12:15:17 11 individual play a part in whether that person
12:15:20 12 should go to the hospital for an assessment of
12:15:21 13 physical injuries?

12:15:22 14 A. Well, I say -- I say the actions of the
12:15:25 15 person because I'm going off of what I had
12:15:28 16 previously stated about observations.

12:15:30 17 If you're bleeding from a gunshot wound, and
12:15:33 18 sometimes ADI, there's just no -- I'm sorry. Not
12:15:36 19 ADI, but an ambulance, sometimes there's no
12:15:38 20 ambulance even available, so we might take them
12:15:41 21 immediately.

12:15:42 22 Q. Now, even assuming that there might not
12:15:45 23 be blood gushing, would you sometimes take

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12:15:49 1 individuals to ECMC yourself rather than waiting
12:15:51 2 for an ambulance to arrive?

12:15:53 3 A. There are -- there are times, yes.

12:15:56 4 Q. And what would be those times where an
12:15:58 5 officer rather than an ambulance would take that
12:16:01 6 individual to assess them for physical injuries?

12:16:04 7 MS. HUGGINS: Form.

12:16:05 8 THE WITNESS: Maybe because -- I mean, this
12:16:08 9 goes back to where I said that there's a lot of
12:16:10 10 different variables.

12:16:11 11 Maybe the officer wants to just get them
12:16:14 12 there quicker. Maybe there's no ambulance
12:16:17 13 available. Maybe they're saying that the ambulance
12:16:20 14 is taking too long. The observed potential
12:16:26 15 injuries.

12:16:27 16 I mean, there's -- there's a lot of
12:16:28 17 different variables that would -- that would make
12:16:31 18 someone take them to ECMC in their patrol vehicle
12:16:35 19 or not to.

12:16:36 20 BY MR. DAVENPORT:

12:16:36 21 Q. So what types of observed personal
12:16:39 22 injuries would make it where an officer rather than
12:16:41 23 an ambulance would take that person to ECMC?

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12:16:45 1 MS. HUGGINS: Form.

12:16:45 2 THE WITNESS: So -- so, again, it would
12:16:48 3 go -- it would go back to other different variables.

12:16:51 4 If -- there's -- there's been times where
12:16:52 5 people have been shot and we let them go in an
12:16:55 6 ambulance. There's other times where we rush them
12:16:58 7 there in our -- in our patrol car.

12:16:59 8 BY MR. DAVENPORT:

12:17:00 9 Q. Well, sure, but let's move away from
12:17:02 10 a gunshot wound. Let's say that a person had some
12:17:06 11 sort of a head injury, because that's, you know,
12:17:09 12 more pertinent to this case.

12:17:10 13 What sorts of circumstances would make it
12:17:12 14 where a police officer rather than an ambulance
12:17:16 15 would drive that individual to the hospital?

12:17:19 16 MS. HUGGINS: Form.

12:17:24 17 THE WITNESS: Maybe we're just trying to get
12:17:27 18 them quicker attention, and it's -- it's -- if
12:17:33 19 the -- maybe if the subject is still moving around,
12:17:35 20 we know that there's no neck injury, so you can
12:17:38 21 still take them.

12:17:40 22 BY MR. DAVENPORT:

12:17:40 23 Q. Is that --

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12:17:41 1 A. There's other -- there's a lot of
12:17:43 2 different variables.

12:17:46 3 Q. Now --

12:17:46 4 A. Going off of observations from that
12:17:50 5 specific time. There's no -- there's no set rule
12:17:53 6 that one follows.

12:17:56 7 Q. Now, would you agree with me that if
12:17:59 8 there was some sort of internal brain bleeding,
12:18:01 9 that would be something that would be not
12:18:03 10 observable, correct?

12:18:04 11 MS. HUGGINS: Form.

12:18:05 12 THE WITNESS: Internal brain bleeding would
12:18:06 13 not be observable, that is correct.

12:18:07 14 BY MR. DAVENPORT:

12:18:07 15 Q. And would that be part of your
12:18:09 16 assessment of the individual, whether he should be
12:18:12 17 driven by police officers or driven by an ambulance?

12:18:15 18 MS. HUGGINS: Form.

12:18:16 19 THE WITNESS: Can you -- can you say that
12:18:18 20 again?

12:18:19 21 BY MR. DAVENPORT:

12:18:19 22 Q. Would it be part of your consideration
12:18:21 23 as a police officer, if that person may have

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12:18:23 1 internal brain bleeding, that that person should go
12:18:26 2 by ambulance or by a police vehicle?

12:18:30 3 A. Sure, if there was something that we
12:18:33 4 thought was happening internally.

12:18:35 5 Q. And what kinds of things would you
12:18:38 6 observe that would lead you to believe that
12:18:40 7 something was happening internally?

12:18:41 8 MS. HUGGINS: Form.

12:18:42 9 THE WITNESS: Maybe discoloration of the
12:18:45 10 face. Maybe there was some breathing problems.
12:18:52 11 Before we might do something like that, maybe an
12:18:55 12 officer with experience might make some type of
12:18:59 13 decision as far as whether or not to take someone.

12:19:05 14 BY MR. DAVENPORT:

12:19:05 15 Q. If a person had an abrasion on their
12:19:07 16 head after a car accident, would it be an ambulance
12:19:11 17 or a police officer that would drive that individual
12:19:13 18 to the hospital?

12:19:14 19 MS. HUGGINS: Form.

12:19:15 20 THE WITNESS: That can be determined on scene.
12:19:20 21 That can change from -- from accident to accident.

12:19:24 22 BY MR. DAVENPORT:

12:19:24 23 Q. And what sorts of things in your

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12:19:26 1 training would lead you to believe that that is
12:19:28 2 something that is an officer's discretion rather
12:19:30 3 than something that you are mandated to do?

12:19:32 4 MS. HUGGINS: Form.

12:19:37 5 THE WITNESS: You mean taking them in the
12:19:39 6 patrol vehicle --

12:19:40 7 BY MR. DAVENPORT:

12:19:40 8 Q. Rather than an ambulance.

12:19:41 9 A. -- up to ECMC?

12:19:43 10 Maybe the -- the -- the person is
12:19:47 11 complaining of pain -- severe pain and there's no
12:19:50 12 ambulance available. Or maybe we're just trying to
12:19:53 13 get them quicker medical attention.

12:19:55 14 Q. If somebody noticed an abrasion on
12:19:57 15 their head, would they have to be medically
12:20:00 16 examined?

12:20:00 17 MS. HUGGINS: Form.

12:20:02 18 THE WITNESS: No, not necessarily. They
12:20:03 19 don't have to be. They can deny medical attention.

12:20:07 20 BY MR. DAVENPORT:

12:20:07 21 Q. If that person doesn't deny medical
12:20:09 22 attention, are you obligated, as a police officer,
12:20:11 23 to ensure that that person gets medical attention?

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12:20:13 1 A. Yeah.

12:20:13 2 Q. Do you, as you sit here today, know if
12:20:17 3 Mr. Kistner had an abrasion on his head that day?

12:20:19 4 A. I don't -- I don't remember. I was
12:20:23 5 observing what the other officers were doing.

12:20:24 6 Q. Now, if somebody was complaining that
12:20:28 7 their head hurt, are you obligated, as a police
12:20:30 8 officer, to then go and check that person's head?

12:20:39 9 A. Yeah.

12:20:41 10 Q. Do you know, as you sit here today, if
12:20:43 11 anybody went to go check Mr. Kistner's head?

12:20:46 12 A. I don't know if -- I don't know if --
12:20:49 13 if the other officers were just observing from
12:20:52 14 where they were standing or not.

12:20:56 15 They very well could have been just
12:20:59 16 observing from where -- where they were standing.

12:21:02 17 Q. Do you agree that if a person has hair
12:21:04 18 rather than no hair, it may not be something that's
12:21:08 19 observable without actually putting your hands
12:21:11 20 through that individual's hair to notice if there's
12:21:13 21 an abrasion or not?

12:21:14 22 MS. HUGGINS: Form.

12:21:19 23 THE WITNESS: I would say that the relevance

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12:21:23 1 to do that wouldn't be there when we can just have
12:21:27 2 a medical professional do that and be the -- be the
12:21:31 3 judge on that.

12:21:33 4 **BY MR. DAVENPORT:**

12:21:33 5 **Q.** Now, I agree that, you know, this
12:21:36 6 person should eventually be checked by a medical
12:21:38 7 professional, but if at the scene that person is
12:21:41 8 complaining of a head injury, you don't observe any
12:21:44 9 abrasions, and they might be located in the hair
12:21:45 10 somewhere where there's hair located, what would
12:21:49 11 determine whether that person needs to go directly
12:21:52 12 to the hospital through an ambulance or whether the
12:21:55 13 police officer can drive that person to go get the
12:22:00 14 medical attention that they need?

12:22:02 15 **MS. HUGGINS:** Form. Asked and answered.

12:22:03 16 **THE WITNESS:** There's -- there's a -- it's
12:22:05 17 just police discretion.

12:22:06 18 Like I said, I've -- I've done that a few
12:22:09 19 times where I've just driven them up there and
12:22:12 20 never observed any -- any -- any physical or
12:22:16 21 medical injury and just took them in there to see
12:22:18 22 a medical professional.

12:22:20 23 There's other times where I just call on the

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12:22:25 1 scene and I've never observed anything, and there's
12:22:28 2 times where I have observed things and I've taken
12:22:29 3 them to ECMC or let an ambulance come to the scene.

12:22:34 4 I mean, it just depends on -- on the call.
12:22:36 5 But I wasn't making that call that day.

12:22:37 6 BY MR. DAVENPORT:

12:22:37 7 Q. Sure.

12:22:38 8 If somebody has an abrasion on their
12:22:41 9 forehead, would they be required to get medical
12:22:44 10 attention?

12:22:44 11 A. They're not required to, if they can
12:22:47 12 decline medical attention, if they choose to.

12:22:49 13 Q. If they decline -- if they don't
12:22:51 14 decline medical attention, are you required, as
12:22:53 15 a police officer, to make sure that they have their
12:22:55 16 head checked, if you see an --

12:22:55 17 A. If they --

12:22:58 18 Q. -- abrasion on there?

12:22:59 19 A. If they -- if they don't decline, yeah.
12:23:01 20 I mean, there's times where -- like I said, it
12:23:03 21 depends on what -- what the person wants, because
12:23:06 22 people have said, well, I'll just go get it checked
12:23:09 23 out later.

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12:23:09 1 They've told us that, and we don't have to --

12:23:13 2 Q. Did Mr. --

12:23:14 3 A. -- to wait for them.

12:23:15 4 Q. Did Mr. Kistner tell you that he was
12:23:17 5 going to go get his head checked out later?

12:23:19 6 A. I don't remember if Mr. Kistner told
12:23:21 7 me -- anything specifically to me. He could have
12:23:25 8 told other officers that.

12:23:27 9 Q. Now, when you were walking back towards
12:23:30 10 Mr. Kistner, you said that he was on the ground,
12:23:32 11 correct?

12:23:33 12 A. Yeah. Yeah.

12:23:34 13 Q. And when you first got to Mr. Kistner,
12:23:38 14 did you make your own visual assessment of
12:23:40 15 Mr. Kistner?

12:23:42 16 A. Yeah.

12:23:42 17 Q. Was he on the ground, or was he sitting
12:23:45 18 up at that time?

12:23:47 19 MS. HUGGINS: Form.

12:23:48 20 THE WITNESS: I don't -- I don't --

12:23:49 21 MS. HUGGINS: Asked and answered.

12:23:51 22 THE WITNESS: I don't remember if he was
12:23:52 23 sitting down. I'm pretty sure he was laying down.

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12:23:54 1 BY MR. DAVENPORT:

12:23:54 2 Q. Did Mr. Kistner ever sit up at any
12:23:56 3 time?

12:23:58 4 A. I don't remember.

12:23:59 5 Q. Did anybody bring Mr. Kistner to his
12:24:03 6 feet?

12:24:03 7 A. I know that I helped him walk back to
12:24:08 8 the truck. I don't know if I was one of the ones
12:24:10 9 that sat him up and helped him to his feet.

12:24:18 10 Q. Do you remember who put the handcuffs
12:24:20 11 on Mr. Kistner?

12:24:21 12 A. I don't.

12:24:22 13 Q. Were handcuffs put on Mr. Kistner?

12:24:24 14 A. I believe so.

12:24:26 15 Q. And who would have been the person to
12:24:28 16 put those handcuffs on Mr. Kistner?

12:24:30 17 A. I don't remember.

12:24:31 18 Q. Up until this point, have you ever put
12:24:35 19 handcuffs on an individual?

12:24:36 20 A. Yes.

12:24:36 21 Q. And was that something that you did
12:24:38 22 before January 1st of 2017?

12:24:44 23 A. I don't know if I had used my own cuffs

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12:24:47 1 on someone up until this point.

12:24:49 2 Q. Had you ever used somebody else's

12:24:51 3 handcuffs before January 1st of 2017?

12:24:56 4 A. I don't remember yet.

12:24:58 5 Q. Okay. During your 16 weeks, do you
12:25:00 6 have an approximation for how many times you used
12:25:03 7 handcuffs on an -- an individual?

12:25:05 8 A. It was -- it was often, but up until
12:25:09 9 this date, I don't -- I don't remember if I had
12:25:10 10 done that yet.

12:25:11 11 Q. Okay. As you were walking Mr. Kistner
12:25:14 12 back towards your vehicle, what was the purpose for
12:25:16 13 walking him towards your vehicle rather than Lauren
12:25:21 14 McDermott and Jenny Velez's vehicle?

12:25:23 15 A. I don't remember why that call was
12:25:24 16 made.

12:25:25 17 Q. Do you know who that call was made by?

12:25:30 18 A. I don't remember.

12:25:31 19 Q. Who was the most senior officer at that
12:25:34 20 situation?

12:25:36 21 A. I don't know how much time Lieutenant
12:25:39 22 Velez has on.

12:25:40 23 Q. Okay.

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12:25:41 1 A. Maybe -- maybe Karl, though.

12:25:42 2 Q. Okay. Who -- at that point, was there
12:25:46 3 any conversation that was had between any of the
12:25:49 4 officers?

12:25:50 5 A. What do you mean?

12:25:53 6 Q. Was there any sort of a conversation,
12:25:55 7 prior to getting Mr. Kistner to his feet, between
12:25:58 8 you, Mr. Schultz, Ms. McDermott, and Ms. Velez?

12:26:04 9 A. I don't know what anyone would be
12:26:07 10 talking about. I think I was more in the state of
12:26:11 11 trying to observe what was going on.

12:26:17 12 Q. Did you at all help -- well, you said
12:26:20 13 that you helped Mr. Kistner walk him back towards
12:26:23 14 your police vehicle, correct?

12:26:25 15 A. Yeah. Per -- per the video that you
12:26:28 16 guys have, yeah. That's --

12:26:29 17 Q. Okay.

12:26:30 18 A. That's what I was going off of.

12:26:32 19 Q. And do you know who else was helping to
12:26:34 20 get Mr. Kistner back to the police vehicle?

12:26:35 21 A. I'd have to see the video again.

12:26:36 22 Q. Okay. Okay. Where did you put
12:26:39 23 Mr. Kistner after you walked him back to your

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12:26:42 1 police vehicle?

12:26:43 2 A. It was me and another officer. I don't
12:26:47 3 remember which one. We put him in the back of 532.

12:26:51 4 Q. Now, was he arrested at that point?

12:26:55 5 A. At -- at this point I don't -- I didn't
12:26:58 6 know. I was way too brand new.

12:27:00 7 Q. Okay.

12:27:00 8 A. I didn't -- I didn't know what was
12:27:01 9 going on.

12:27:04 10 Q. Now, at any point before handcuffs were
12:27:07 11 put on Mr. Kistner, was -- did anybody read him his
12:27:10 12 Miranda rights?

12:27:12 13 A. I don't remember.

12:27:13 14 Q. After handcuffs were put on Mr. Kistner,
12:27:16 15 did anybody read him his Miranda rights?

12:27:18 16 A. If -- if they didn't, I don't -- I
12:27:27 17 don't remember.

12:27:27 18 Q. Now, once Mr. Kistner was in the back
12:27:29 19 of your police vehicle, what were the next steps at
12:27:37 20 that point?

12:27:37 21 A. I believe I just referred to whatever
12:27:40 22 Karl Schultz was -- was doing.

12:27:42 23 Q. Do you recall what was done after

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12:27:44 1 Mr. Kistner was put in the back of the police
12:27:46 2 vehicle?

12:27:46 3 A. I don't.

12:27:49 4 Q. Was there any reason to keep him in the
12:27:51 5 back of the police vehicle rather than outside the
12:27:53 6 police vehicle?

12:27:55 7 A. I wouldn't know what the senior
12:27:57 8 officers were -- were thinking at the time.

12:28:00 9 Q. But as you sit here today, with the
12:28:02 10 experience that you now have, would there be any
12:28:05 11 reason to have Mr. Kistner in the back of the
12:28:06 12 police vehicle rather than outside the police
12:28:08 13 vehicle?

12:28:09 14 MS. HUGGINS: Form.

12:28:09 15 THE WITNESS: If -- if the officers had him
12:28:13 16 under arrest, then yeah, we would -- we would have
12:28:18 17 him in the back of a vehicle.

12:28:23 18 BY MR. DAVENPORT:

12:28:23 19 Q. Would there be any reason to have him
12:28:26 20 in the back of the police vehicle if he was not
12:28:27 21 arrested?

12:28:29 22 A. Yeah, you can detain people in the back
12:28:31 23 of a vehicle.

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12:28:32 1 Q. And could you explain to me what is the
12:28:34 2 difference between being detained, as opposed to
12:28:36 3 arrested?

12:28:37 4 A. Someone that -- someone that is not
12:28:39 5 free to go and they're going to go to jail is under
12:28:42 6 arrest.

12:28:42 7 There's other times where I've detained
12:28:44 8 people to write them tickets and they're totally
12:28:48 9 free to go. You know what I mean?

12:28:51 10 They can -- they can still be in the back of
12:28:53 11 a patrol vehicle and not be under arrest.

12:28:55 12 Q. Now, when a person is detained, do you
12:28:57 13 have to read that person their Miranda rights?

12:29:00 14 MS. HUGGINS: Form.

12:29:00 15 THE WITNESS: No.

12:29:01 16 BY MR. DAVENPORT:

12:29:03 17 Q. Is it only when they're arrested that
12:29:05 18 you then have to read them their Miranda rights?

12:29:07 19 A. Yeah.

12:29:07 20 MS. HUGGINS: Form.

12:29:07 21 THE WITNESS: Yeah.

12:29:09 22 BY MR. DAVENPORT:

12:29:11 23 Q. Okay. Do you know at what point it

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12:29:13 1 went from Mr. Kistner being detained, as opposed to
12:29:15 2 arrested?

12:29:15 3 A. I -- the day that I was on scene, no,
12:29:17 4 I don't.

12:29:17 5 Q. Was it on Schmarbeck?

12:29:27 6 A. I'm unsure. I can't speak for -- for
12:29:29 7 Lauren and -- and Jenny. I don't -- I don't know
12:29:32 8 when it is -- when it was that it was determined
12:29:35 9 that they were going to arrest him.

12:29:37 10 Q. Now, why do you say that it would have
12:29:39 11 been Lauren and Jenny that would have made that
12:29:42 12 determination to arrest Mr. Kistner?

12:29:43 13 MS. HUGGINS: Form.

12:29:44 14 THE WITNESS: They were directly involved
12:29:46 15 with the incident.

12:29:46 16 BY MR. DAVENPORT:

12:29:47 17 Q. Why wouldn't Karl Schultz have any sort
12:29:49 18 of a say in when Mr. Kistner was arrested?

12:29:52 19 MS. HUGGINS: Form.

12:29:53 20 THE WITNESS: The incident didn't involve
12:29:55 21 me, Karl, or our truck. It involved Jenny Velez
12:29:59 22 and Lauren and -- and their truck.

12:30:02 23 BY MR. DAVENPORT:

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12:30:02 1 Q. Would you have been able to make the
12:30:05 2 arrest even though it did not involve your truck?

12:30:15 3 A. I wouldn't see any reason why we would
12:30:17 4 make that arrest.

12:30:18 5 MS. HUGGINS: Form.

12:30:22 6 BY MR. DAVENPORT:

12:30:22 7 Q. Now, once you got Mr. Kistner back to
12:30:25 8 your police vehicle, he was sitting down in your
12:30:29 9 police vehicle, in the back of your police vehicle;
12:30:31 10 is that correct?

12:30:31 11 A. Yes.

12:30:35 12 Q. Now, were any sort of assessments of
12:30:37 13 his physical condition made at that time?

12:30:40 14 A. I don't -- I don't remember.

12:30:41 15 Q. What about emotionally?

12:30:44 16 Are you obligated, as a police officer, to
12:30:45 17 check on a person emotionally when they're placed
12:30:48 18 under arrest or detained?

12:30:49 19 A. Sure.

12:30:49 20 MS. HUGGINS: Form.

12:30:50 21 BY MR. DAVENPORT:

12:30:51 22 Q. Was there anything concerning about
12:30:54 23 Mr. Kistner's emotional or psychological state at

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12:31:00 1 that time?

12:31:00 2 A. Not that I -- not that I remember.

12:31:04 3 Q. Did Mr. Kistner say anything in the
12:31:05 4 back of the police vehicle?

12:31:07 5 A. I don't know. I think -- I think the
12:31:09 6 video you guys have, we walked away from the
12:31:12 7 vehicle.

12:31:12 8 Q. Okay.

12:31:13 9 A. So I don't -- I don't -- the time that
12:31:15 10 I was in the vehicle with Karl, taking him to ECMC,
12:31:19 11 I don't even remember what was said in there.

12:31:20 12 Q. Okay. So after you walked away from
12:31:24 13 the police vehicle, where did you go next?

12:31:32 14 A. I have to refer back to the -- the
12:31:36 15 video.

12:31:36 16 Q. Do you remember at all where Jim's son
12:31:38 17 was at that point, or the other individual who ran
12:31:41 18 out from the same house as Jim?

12:31:43 19 MS. HUGGINS: Form.

12:31:44 20 THE WITNESS: I don't remember at this
12:31:45 21 point.

12:31:45 22 BY MR. DAVENPORT:

12:31:48 23 Q. Okay. Was there ever a concern with

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12:31:50 1 this individual who ran out from Jim's house?

12:31:53 2 A. We would have to refer back to the
12:31:57 3 video.

12:31:58 4 Q. Well, I guess not --

12:32:00 5 A. He -- he approached -- he approached
12:32:04 6 officers. He approached officers and wanted to
12:32:11 7 speak to us. I remember that.

12:32:17 8 And I remember for purposes of officer
12:32:19 9 safety, we made him pat down, and we gave him
12:32:23 10 a -- a waistband pat-down. Make sure there was
12:32:25 11 no weapons or anything.

12:32:26 12 Q. Now, when was that pat-down done?
12:32:29 13 Was it when he initially made contact with the
12:32:33 14 police officers, or was that done later, the
12:32:35 15 pat-down of this individual?

12:32:35 16 A. We'd have to look at the video.
12:32:38 17 I don't remember.

12:32:38 18 Q. Okay. So this pat-down was made
12:32:42 19 because why?

12:32:43 20 MS. HUGGINS: Form. Asked and answered.

12:32:45 21 THE WITNESS: For safety reasons.

12:32:46 22 BY MR. DAVENPORT:

12:32:46 23 Q. And those safety reasons were why?

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12:32:50 1 What?

12:32:51 2 A. It's -- it's common that people
12:32:53 3 approach police with weapons on them.

12:32:55 4 Q. Okay. Did you have any reason to
12:32:57 5 believe that this individual approached police
12:32:59 6 officers with weapons?

12:33:00 7 A. There's no reason why I would believe
12:33:03 8 that anyone would walk up to us without weapons.

12:33:06 9 Q. There's never a time that individuals
12:33:09 10 would walk up to police officers without weapons?

12:33:11 11 MS. HUGGINS: Form.

12:33:12 12 THE WITNESS: It happens often.

12:33:13 13 BY MR. DAVENPORT:

12:33:14 14 Q. I guess -- I understand that it happens
12:33:16 15 often.

12:33:16 16 A. So -- so for -- for -- for my safety
12:33:18 17 and everyone else that's nearby, yeah, we always --
12:33:21 18 or I'm not going to say always, but often we'll --
12:33:24 19 we'll do pat-downs for weapons.

12:33:26 20 Q. Okay. So --

12:33:27 21 A. Because even someone that's just trying
12:33:29 22 to talk to us or make a complaint, they have
12:33:32 23 weapons on them.

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12:33:33 1 Q. Okay. So I guess that's my question is
12:33:35 2 that I understand that, you know, for officer
12:33:38 3 safety --

12:33:38 4 A. Yeah.

12:33:38 5 Q. -- you would always want to have that
12:33:41 6 pant-down, but there are other instances where
12:33:44 7 individuals approach police officers without
12:33:45 8 weapons, correct?

12:33:46 9 A. Yeah, correct.

12:33:47 10 Q. Okay. Now, do you remember approximately
12:33:51 11 what this individual looked like that was coming
12:33:53 12 out of the house?

12:33:54 13 MS. HUGGINS: Form.

12:33:55 14 THE WITNESS: Younger, white male.

12:33:58 15 BY MR. DAVENPORT:

12:33:58 16 Q. Okay. Do you remember approximately
12:34:01 17 what his size was?

12:34:02 18 A. I don't.

12:34:05 19 Q. Okay.

12:34:07 20 A. Yeah, I don't.

12:34:08 21 Q. Okay. Was he saying anything at that
12:34:14 22 time, when he first initially came out?

12:34:19 23 A. I think he was trying to find out what

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12:34:21 1 was going on, but I don't remember anything, what
12:34:24 2 he was saying.

12:34:24 3 Q. Okay. Do you know, was he using his
12:34:27 4 cell phone or any other sort of communicating
12:34:31 5 device?

12:34:31 6 A. I don't. I don't remember.

12:34:33 7 Q. Okay. Do you remember if he was trying
12:34:36 8 to make a call to an ambulance?

12:34:42 9 A. I don't remember if he had a phone or
12:34:44 10 not. I know that 911 calls were made.

12:34:50 11 Q. Do you remember him referring to an
12:34:52 12 ambulance being called?

12:34:53 13 A. I don't.

12:34:53 14 Q. Do you remember Jim being on the
12:34:56 15 ground, asking for an ambulance?

12:34:58 16 A. I don't.

12:34:59 17 Q. Okay. Where was that individual
12:35:04 18 standing when you performed the pat-down?

12:35:08 19 MS. HUGGINS: Form.

12:35:08 20 THE WITNESS: We'd -- we'd have to look at
12:35:10 21 the video that was provided.

12:35:12 22 BY MR. DAVENPORT:

12:35:12 23 Q. Okay.

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12:35:13 1 A. Because I don't -- I don't remember.

12:35:15 2 Q. Okay. And what would generally consist
12:35:17 3 of that pat-down?

12:35:19 4 MS. HUGGINS: Form.

12:35:20 5 THE WITNESS: Just patting -- patting down
12:35:22 6 the outside of his pants pockets, waistband.
12:35:27 7 Anyplace where I would think he might have a knife
12:35:30 8 or a gun or something.

12:35:31 9 But it was quite clear that, after the
12:35:33 10 pat-down, he didn't -- I mean, he didn't have
12:35:35 11 anything. I don't remember, but maybe he just
12:35:40 12 wanted to find out what was going on.

12:35:42 13 BY MR. DAVENPORT:

12:35:42 14 Q. If an individual went into -- close to
12:35:46 15 police officers and then walked away from those
12:35:48 16 police officers and tried to go back into their
12:35:50 17 home, would there be any reason to begin, commence
12:35:55 18 a pat-down of that individual?

12:35:57 19 MS. HUGGINS: Form.

12:35:58 20 THE WITNESS: Can you --

12:36:00 21 MR. DAVENPORT: So if -- I'm sorry. You can
12:36:03 22 strike that.

12:36:04 23 If -- if an individual approached police

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12:36:06 1 officers and then walked away from those police
12:36:08 2 officers, and then he tried to go back into the
12:36:10 3 house where he came from, would there be any reason
12:36:14 4 to do a pat-down of that individual? Bring him
12:36:17 5 back out, away from the house?

12:36:18 6 MS. HUGGINS: Form.

12:36:19 7 THE WITNESS: He could have -- he could have
12:36:22 8 said something that one of the officers might have
12:36:24 9 wanted to investigate further.

12:36:26 10 BY MR. DAVENPORT:

12:36:26 11 Q. And what kind of --

12:36:27 12 A. And then --

12:36:32 13 Q. -- things would those have been?

12:36:34 14 MS. HUGGINS: Form.

12:36:36 15 THE WITNESS: Could be tons of things.
12:36:38 16 I don't want to speculate what other officers heard
12:36:41 17 or what judgment calls or decisions they were
12:36:43 18 making.

12:36:43 19 BY MR. DAVENPORT:

12:36:43 20 Q. If that individual was saying that he
12:36:45 21 was going to call an ambulance, would that be
12:36:46 22 a reason to do a pat-down of that individual?

12:36:48 23 MS. HUGGINS: Form.

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12:36:48 1 THE WITNESS: No.

12:36:49 2 BY MR. DAVENPORT:

12:36:49 3 Q. Okay. So after the pat-down was done,
12:36:53 4 what would be the next steps?

12:36:55 5 Would you have to get background information
12:36:58 6 for that individual?

12:37:03 7 A. You know, you're -- I mean, it's not
12:37:05 8 required. Maybe -- like maybe we're just having
12:37:07 9 the conversation that he wanted to have now, now
12:37:10 10 that we know that the scene is safer.

12:37:12 11 Q. So after having that conversation -- to
12:37:16 12 have that conversation with somebody, would you
12:37:18 13 also want to verify any sort of identification or
12:37:21 14 anything like that?

12:37:23 15 A. I mean, you might want to, you might
12:37:26 16 not want to.

12:37:27 17 Q. What would be the reasons that you
12:37:29 18 would want to verify the identification?

12:37:31 19 MS. HUGGINS: Form.

12:37:31 20 THE WITNESS: Maybe his -- who he's claiming
12:37:36 21 to be is relevant to the scene that we were at.
12:37:40 22 Maybe -- for example, if he told us that
12:37:45 23 Mr. Kistner was his father, maybe I didn't -- or,

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12:37:47 1 you know, no one needed to really look into him
12:37:53 2 being who he says. Like it's: Okay. You're his
12:37:57 3 son. We believe you.

12:37:59 4 BY MR. DAVENPORT:

12:38:01 5 Q. Was anything said to him about where
12:38:03 6 his father was going or how his father was doing?

12:38:06 7 A. I don't -- I don't remember.

12:38:07 8 Q. Okay. Was there anything that was said
12:38:11 9 to this individual, whether he could go speak to
12:38:14 10 his father or not?

12:38:18 11 Would there be any reason why a police
12:38:20 12 officer would allow a son to speak with his
12:38:22 13 officer? I -- I got --

12:38:23 14 MS. HUGGINS: Form. Now that's two
12:38:26 15 questions in a row.

12:38:27 16 THE WITNESS: If -- if I was present for
12:38:28 17 that conversation, I don't remember. Sometimes we
12:38:32 18 do let people speak to subjects in the back of our
12:38:38 19 patrol vehicle, other times we don't.

12:38:40 20 BY MR. DAVENPORT:

12:38:40 21 Q. Do you remember if you let this
12:38:41 22 individual speak to the individual in the back of
12:38:42 23 your police vehicle?

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12:38:43 1 A. It was never asked of me, that
12:38:45 2 I remember. If it was asked of me, I deferred
12:38:50 3 to senior officers.

12:38:53 4 Q. Do you have any reason to believe that
12:38:54 5 this individual did speak to the -- Mr. Kistner in
12:38:57 6 the back of the police vehicle?

12:38:59 7 A. I don't want to speculate if he did or
12:39:02 8 didn't. It was never anything that was mentioned
12:39:06 9 to me that I remember, and I would have deferred.

12:39:08 10 Q. Okay. Do you remember seeing that
12:39:10 11 individual at all after leaving Schmarbeck that
12:39:16 12 day?

12:39:16 13 A. I don't think I've had a run-in with
12:39:20 14 Mr. Kistner or his son since that day.

12:39:21 15 MR. DAVENPORT: Okay.

12:39:21 16 (Discussion off the record.)

12:39:21 17 BY MR. DAVENPORT:

12:39:35 18 Q. So when you say run-ins with Mr. Kistner,
12:39:38 19 does that pertain to just calls, or does that
12:39:41 20 pertain to any times that you may have seen him on
12:39:43 21 the street when you weren't necessarily responding
12:39:45 22 to a call?

12:39:46 23 MS. HUGGINS: Form.

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12:39:46 1 THE WITNESS: What I mean by that is -- by
12:39:49 2 a run-in is I don't think I've ever seen him
12:39:52 3 outside of that call, period. I don't think I've
12:39:57 4 ever seen him in a store, no other calls. Yeah,
12:40:03 5 I don't think I've ever seen him or his son since.

12:40:07 6 BY MR. DAVENPORT:

12:40:08 7 Q. Now, did you have any conversations
12:40:09 8 with anybody about this incident on January 1st of
12:40:15 9 2017?

12:40:15 10 MS. HUGGINS: Well --

12:40:16 11 THE WITNESS: Her and --

12:40:18 12 MS. HUGGINS: He's asking outside of me.

12:40:20 13 THE WITNESS: Oh, outside of -- Karl and
12:40:24 14 Jenny and Lauren.

12:40:28 15 BY MR. DAVENPORT:

12:40:28 16 Q. Did you ever have any conversations
12:40:29 17 with your lieutenant, McHugh?

12:40:31 18 A. I did not.

12:40:32 19 Q. Okay. Do you know if anybody had
12:40:34 20 conversations with Lieutenant McHugh?

12:40:35 21 A. I believe someone on scene made
12:40:38 22 a phone call to him, but I don't remember which
12:40:40 23 officer that was.

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12:40:44 1 Q. Do you remember, besides January 1st of
12:40:47 2 2017, any of the officers that were on scene having
12:40:50 3 a conversation with Lieutenant McHugh about the
12:40:52 4 incident on January 1st of 2017?

12:40:53 5 A. Not that I was present for.

12:40:54 6 Q. What about other senior officers? Any
12:40:58 7 captains or anybody higher than lieutenant?

12:41:01 8 A. Definitely not while I was present for.

12:41:04 9 Q. Have you ever been investigated by
12:41:05 10 internal affairs?

12:41:06 11 MS. HUGGINS: Form, and 50-a objection, to
12:41:10 12 the extent that applies. You can answer.

12:41:11 13 THE WITNESS: Okay. No suspensions or
12:41:14 14 anything like that, no.

12:41:15 15 BY MR. DAVENPORT:

12:41:16 16 Q. Have you ever been -- had a discussion
12:41:18 17 with internal affairs about January 1st of 2017?

12:41:21 18 A. No.

12:41:24 19 Q. When was the first time that you were
12:41:27 20 aware that a lawsuit had been commenced against
12:41:31 21 you?

12:41:31 22 A. I believe I saw it on the news.

12:41:32 23 Q. That was the first time?

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12:41:33 1 A. Yes.

12:41:34 2 Q. Did you receive a summons or a complaint?

12:41:38 3 A. I received some type of packet that I was
12:41:43 4 served with that I gave to our union.

12:41:46 5 Q. Okay. When, approximately, did you
12:41:50 6 receive that packet?

12:41:50 7 A. Or I'm -- I'm sorry. I received the
12:41:52 8 packet before I saw it on the news, but yeah, I'm
12:41:55 9 sorry, yeah, I remember, yeah, I received the
12:41:59 10 packet first. That's when I knew that this whole
12:42:02 11 thing was taking place, and then I saw it on -- on
12:42:05 12 the news.

12:42:05 13 Q. Okay. Okay.

12:42:06 14 A. Yeah.

12:42:07 15 Q. Did you happen to look at any of the
12:42:09 16 materials that were in that packet?

12:42:10 17 A. I read it over with a union rep.

12:42:12 18 Q. Okay. When, approximately, did that
12:42:15 19 take place?

12:42:17 20 A. I don't -- I don't remember exactly
12:42:21 21 when I was served with those papers.

12:42:23 22 Q. Okay. So if you were served with those
12:42:26 23 papers in 2018, would it have been during that year

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12:42:29 1 that you sat down with the union rep?

12:42:34 2 A. I -- like I said, I don't remember the
12:42:36 3 date that I was served the --

12:42:40 4 Q. Sure.

12:42:41 5 A. -- the papers. I either gave the union
12:42:43 6 rep the papers the day of or the day after I was
12:42:46 7 served with those papers.

12:42:47 8 Q. Okay. And when you gave the papers to
12:42:50 9 that union rep, did you sit down that day?

12:42:53 10 A. Yeah.

12:42:54 11 Q. Okay. What did the union rep say to
12:42:57 12 you?

12:42:57 13 A. He said he -- he gave me her phone
12:43:00 14 number and that someone would be contacting me
12:43:03 15 about it, but he didn't -- he didn't really say --
12:43:06 16 say much.

12:43:07 17 Q. Okay. Now, did you reach out to
12:43:10 18 Ms. Huggins, or did Ms. Huggins reach out to you
12:43:12 19 first?

12:43:13 20 MS. HUGGINS: Well, form. I -- I don't know
12:43:15 21 why you're inquiring into contact between counsel
12:43:17 22 and client.

12:43:18 23 MR. DAVENPORT: Well, I just want to know,

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12:43:19 1 you know, after he received these papers, you know,
12:43:21 2 what were the next steps that you took?

12:43:23 3 Did you reach out to your attorney, or did
12:43:25 4 you wait for your attorney to contact you?

12:43:27 5 MS. HUGGINS: Again --

12:43:27 6 MR. DAVENPORT: You -- you can answer,
12:43:28 7 because I'm not asking what the substance was.
12:43:30 8 I'm just asking when you contacted -- whether you
12:43:33 9 contacted Ms. Huggins or whether she contacted you.

12:43:36 10 That's not attorney-compliant privilege.
12:43:38 11 I'm just merely asking when he contacted you or you
12:43:41 12 contacted him. I don't want to know --

12:43:41 13 MS. HUGGINS: I'm asking for the basis of
12:43:43 14 inquiry into contact with counsel, and I'm allowed
12:43:46 15 to ask the basis of --

12:43:46 16 MR. DAVENPORT: Are you going -- are you
12:43:47 17 going to direct him to not answer the question?

12:43:48 18 MS. HUGGINS: I just inquired the basis of
12:43:50 19 your question. That's what --

12:43:53 20 MR. DAVENPORT: Well, I'm asking because --

12:43:53 21 MS. HUGGINS: -- I just did.

12:43:53 22 THE REPORTER: Don't talk over each other,
12:43:53 23 please.

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12:43:53 1 MR. DAVENPORT: Okay.

12:43:53 2 So what I'm asking is: Why -- or if he
12:43:57 3 received these papers and if he discussed them with
12:44:00 4 the union rep, what was his concern level?

12:44:02 5 I want to know his concern level with what
12:44:04 6 happened.

12:44:04 7 MS. HUGGINS: So that was not your question.

12:44:06 8 MR. DAVENPORT: Well, I know, it's --
12:44:06 9 it's --

12:44:06 10 MS. HUGGINS: You can pose --

12:44:07 11 MR. DAVENPORT: -- different, but --

12:44:08 12 MS. HUGGINS: You can pose your question to
12:44:09 13 him.

12:44:09 14 MR. DAVENPORT: It's certainly relevant to
12:44:12 15 that. It's relevant to that inquiry.

12:44:14 16 MS. HUGGINS: Sir, I objected to a totally
12:44:16 17 different question that veers on attorney-client
12:44:19 18 privilege. You have now posed a different question.

12:44:21 19 You can ask that of the witness, but
12:44:23 20 I am allowed to ask the basis of your question for
12:44:26 21 an objection. That's -- that's all I'm doing.
12:44:28 22 You may ask.

12:44:28 23 BY MR. DAVENPORT:

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12:44:29 1 Q. You can answer.

12:44:29 2 A. I received a court notification
12:44:32 3 by the court liaison.

12:44:34 4 Q. Okay. So when did you receive that
12:44:36 5 court notification?

12:44:37 6 A. There would be records of it somewhere,
12:44:40 7 but no, I don't -- I don't remember.

12:44:42 8 Q. Okay.

12:44:43 9 A. There's definitely records of it at
12:44:46 10 City Court or something.

12:44:47 11 Q. Okay. So now when you reached out to
12:44:49 12 that court liaison --

12:44:50 13 A. No, no. They --

12:44:52 14 Q. Or they -- they reached out to you.

12:44:54 15 A. Yeah.

12:44:54 16 Q. Okay. Or when you got notification of
12:44:55 17 that court liaison, had you contacted an attorney
12:44:58 18 at that point?

12:44:58 19 A. No.

12:44:59 20 Q. Okay.

12:45:00 21 A. No.

12:45:00 22 Q. Was it after you received that
12:45:02 23 notification?

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12:45:03 1 MS. HUGGINS: Form.

12:45:04 2 BY MR. DAVENPORT:

12:45:05 3 Q. That you contacted an attorney?

12:45:06 4 A. I never contacted an attorney.

12:45:07 5 Q. Okay. Okay. So did you watch the

12:45:14 6 video when you received that packet?

12:45:16 7 A. No. The video wasn't provided at that
12:45:19 8 time.

12:45:20 9 Q. Okay. You didn't receive any exhibits
12:45:25 10 or anything else besides that initial complaint in
12:45:28 11 that packet?

12:45:29 12 A. No. The packet was -- it was pretty
12:45:35 13 thick. There was like a list of -- a list of
12:45:39 14 charges in there. If there were -- if there were
12:45:41 15 exhibits in there, I don't remember -- I don't
12:45:45 16 remember reading -- reading that or -- or -- or it
12:45:48 17 being a topic of discussion with the union rep.

12:45:51 18 Q. Okay. What kinds of things did you
12:45:56 19 discuss with the union rep about the complaint?

12:45:57 20 A. It was along the lines of me handing
12:46:00 21 him the packet. He flipped through it a couple
12:46:05 22 times and just said, just wait for court to notify
12:46:09 23 you. And then that's what I did.

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12:46:13 1 Q. Were you ever -- did you ever have
12:46:15 2 another discussion with that union rep?

12:46:17 3 A. No.

12:46:25 4 Q. How long, approximately, was that
12:46:27 5 initial meeting with the union rep?

12:46:32 6 A. It was a pretty informal thing. It
12:46:37 7 wasn't long. Five minutes or so for him to just
12:46:41 8 skim through it.

12:46:41 9 Q. Okay.

12:46:43 10 A. And I went on my way.

12:46:45 11 Q. Have you had to meet with that union
12:46:46 12 rep or any other union reps for any other lawsuits
12:46:49 13 that were commenced against you?

12:46:50 14 A. No.

12:46:51 15 Q. Okay. Is this the only lawsuit that
12:46:54 16 has ever been commenced against you?

12:46:56 17 A. Yeah. Yes.

12:46:57 18 Q. Okay. When was the next time that you
12:46:58 19 spoke to somebody about this lawsuit?

12:47:02 20 A. Whenever we have court notifications to
12:47:05 21 talk to her. I might have talked to Karl about it
12:47:15 22 two or three times, but it's not a huge discussion.

12:47:21 23 Q. Okay.

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12:47:22 1 A. You know, me and Karl are on two
12:47:25 2 different shifts, and we talk about two different
12:47:28 3 things.

12:47:28 4 Q. Okay. So when you say two different
12:47:31 5 shifts, are you referring to like maybe --

12:47:33 6 A. I'm -- I'm sorry. He's on -- he's on
12:47:35 7 day shift and I'm on afternoons.

12:47:36 8 Q. Okay.

12:47:37 9 A. So we don't -- we don't really cross
12:47:39 10 paths as much.

12:47:41 11 Q. Sure.

12:47:41 12 So after that first initial 16 weeks, did
12:47:44 13 you automatically go to the afternoon shift?

12:47:46 14 A. Yes.

12:47:46 15 Q. Okay. So the only time that you would
12:47:50 16 have seen Karl Schultz, would that be typically
12:47:52 17 during briefing --

12:47:53 18 MS. HUGGINS: Form.

12:47:54 19 BY MR. DAVENPORT:

12:47:54 20 Q. -- before you started the afternoon
12:47:55 21 shift?

12:47:55 22 A. No. I went to -- so when he was
12:48:01 23 working, I was on my off days, and then when I was

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12:48:05 1 working, he was on his off days, so I didn't really
12:48:08 2 see him too much in Charlie.

12:48:11 3 He transferred to Bravo, and then I went to
12:48:13 4 Delta for a little bit and came back, and he was
12:48:15 5 still in Bravo.

12:48:16 6 Q. Okay.

12:48:17 7 A. And now we're -- we're both in Bravo,
12:48:19 8 and I don't see him too often because he's usually
12:48:22 9 on calls when I'm in briefing.

12:48:24 10 Q. Okay. Were you involved in the
12:48:26 11 criminal proceedings at all against Mr. Kistner?

12:48:32 12 A. I don't remember if I was notified to
12:48:35 13 go to court for that.

12:48:36 14 Q. Okay. Which officers are typically
12:48:40 15 notified to go to court for criminal proceedings?

12:48:42 16 A. The arresting and assisting officers.
12:48:44 17 It could also be whoever is on the case history,
12:48:49 18 but they don't always notify everyone in.

12:48:53 19 Q. Okay.

12:48:55 20 A. And I don't really know how that's
12:48:57 21 determined.

12:48:57 22 Q. Okay.

12:48:58 23 A. But definitely the arresting officer.

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12:49:01 1 Q. What would be the circumstances where
12:49:03 2 an assisting officer would be required to go into
12:49:07 3 court for a court proceeding -- a criminal
12:49:09 4 proceeding?

12:49:09 5 MS. HUGGINS: Form.

12:49:12 6 THE WITNESS: I don't know the requirements
12:49:15 7 for an assisting officer because on -- on an arrest
12:49:20 8 form, there's the arresting officer and assisting
12:49:23 9 officer, and they've gone sometimes and not
12:49:27 10 notified the assisting officer and notified way
12:49:31 11 down the case history list, other people. So I'm
12:49:34 12 not -- I'm not sure how that is determined.

12:49:36 13 BY MR. DAVENPORT:

12:49:36 14 Q. Okay. Now, after you received that
12:49:42 15 initial packet, when did you first watch the video
12:49:47 16 that was provided as part of the complaint?

12:49:53 17 A. One of the times I met with my
12:49:55 18 attorney, and I don't know which time that was.

12:49:57 19 Q. Okay. Okay. Do you know if it was
12:50:01 20 shortly after the lawsuit was commenced?

12:50:04 21 A. I don't know.

12:50:05 22 Q. Okay. Do you know, was it within
12:50:07 23 a year of the lawsuit being commenced?

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12:50:15 1 A. I don't remember the time that my first
12:50:18 2 court notification was with my attorney and the
12:50:22 3 time that I received the packet.

12:50:26 4 Q. How do you receive those court
12:50:28 5 notifications?

12:50:28 6 A. They're given to our -- our stationhouse,
12:50:31 7 and then a report technician will contact us via
12:50:36 8 phone or -- I'm sorry -- there's -- depending on
12:50:41 9 the stationhouse, they might just put your
12:50:44 10 notification in your -- your mailbox. Other ones
12:50:46 11 it's in a binder and you have to check yourself.

12:50:48 12 Q. Okay. Do you know where those court
12:50:51 13 notifications come from?

12:50:52 14 A. The Court Liaison Bureau.

12:50:54 15 Q. Okay. Do you have records of those
12:50:57 16 court notifications from the liaison?

12:51:01 17 A. I usually throw mine out once the court
12:51:05 18 date is over. I mean, they -- I don't know if they
12:51:11 19 keep it or not or how long they would keep it.

12:51:13 20 Q. Do you know, is the court liaison, is
12:51:17 21 that somebody affiliated with the courts or the
12:51:18 22 Buffalo Police Department?

12:51:21 23 A. Courts, and then it goes to BPD.

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12:51:23 1 Q. Okay. Do you know who that individual
12:51:25 2 is for the court liaison?

12:51:27 3 A. I don't, actually.

12:51:28 4 Q. Okay. How often did you receive
12:51:32 5 notifications from the court liaison?

12:51:33 6 A. It depends on how frequently you arrest
12:51:36 7 or you're -- you're needed in -- in court.

12:51:40 8 Q. Okay. Pertaining to this lawsuit,
12:51:45 9 how -- how often were you notified by the court
12:51:47 10 liaison?

12:51:49 11 MS. HUGGINS: Form. And, again, to the
12:51:52 12 extent that you're going into contact he's had with
12:51:55 13 counsel, I mean --

12:51:55 14 MR. DAVENPORT: I'm not.

12:51:56 15 MS. HUGGINS: -- that would be privileged.

12:51:57 16 MR. DAVENPORT: Well, no. Not --

12:51:58 17 MS. HUGGINS: He's already indicated that
12:52:00 18 that's --

12:52:00 19 MR. DAVENPORT: Not the times that he's had
12:52:01 20 contact with you. What is said during that contact
12:52:03 21 is absolutely privileged. I am not asking that.

12:52:05 22 I'm just simply asking: Pertaining to this
12:52:08 23 lawsuit, how many notifications did you receive

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12:52:10 1 from the court liaison?

12:52:11 2 And if you want to argue that that's
12:52:12 3 privileged, you can make that argument, but he can
12:52:15 4 answer it, and then you can make that objection
12:52:17 5 later, and it can be struck from the record.

12:52:19 6 So you may answer.

12:52:20 7 **MS. HUGGINS:** Well, that's not how
12:52:22 8 objections work. If something is privileged,
12:52:24 9 that's an objection that is preserved and he would
12:52:27 10 not answer during a deposition.

12:52:28 11 **MR. DAVENPORT:** Are you going to direct him
12:52:29 12 to not answer?

12:52:30 13 **MS. HUGGINS:** Sir, you can ask that
12:52:32 14 question, but I object to the -- to the extent that
12:52:35 15 you're veering towards that.

12:52:37 16 He's already indicated that court liaison is
12:52:40 17 the mechanism by which counsel directs him to come
12:52:44 18 meet with him.

12:52:45 19 **MR. DAVENPORT:** And I just asked him how
12:52:47 20 many times he received that notification from the
12:52:48 21 court liaison for this case.

12:52:52 22 You can answer.

12:52:55 23 **MS. HUGGINS:** You may answer.

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12:52:56 1 THE WITNESS: I think two or three.

12:52:57 2 BY MR. DAVENPORT:

12:52:58 3 Q. Okay. Would those have been the only
12:53:01 4 times that you would have met with Ms. Huggins?

12:53:04 5 A. Yep. Yes.

12:53:05 6 Q. Okay. When, approximately, was that
12:53:09 7 first notification?

12:53:10 8 Was it recently or was it a while ago?

12:53:12 9 MS. HUGGINS: Form. Asked and answered.

12:53:14 10 THE WITNESS: No. That would have been
12:53:16 11 a while ago.

12:53:17 12 BY MR. DAVENPORT:

12:53:18 13 Q. Like more than a year ago?

12:53:19 14 A. I don't -- I don't remember.

12:53:21 15 Q. Okay. When was the second time that
12:53:26 16 you received that notification?

12:53:29 17 A. I don't -- I don't remember -- I don't
12:53:38 18 remember. I know I saw her last week --

12:53:40 19 Q. Okay.

12:53:41 20 A. -- for something.

12:53:41 21 Q. Did you receive a notification from the
12:53:43 22 court liaison?

12:53:44 23 A. Yeah.

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12:53:44 1 Q. Okay. So one of -- one of the three
12:53:46 2 times that you received a notification was for this
12:53:48 3 deposition?

12:53:49 4 A. Like I -- like I said, I don't remember
12:53:51 5 if it was two or three times, but I know I saw her
12:53:55 6 like last week, yeah.

12:53:56 7 Q. Okay. When was the first time that you
12:53:59 8 watched the video with your attorney or with
12:54:04 9 anybody else affiliated with the City of Buffalo
12:54:08 10 Law Department?

12:54:14 11 A. I think it was the -- I think it was
12:54:17 12 the first time.

12:54:18 13 Q. Okay. Now, at that time, do you know
12:54:28 14 if the second notification that you received, did
12:54:33 15 you have to sign a verification at all?

12:54:37 16 MS. HUGGINS: Form.

12:54:37 17 THE WITNESS: What do you mean? That
12:54:39 18 I showed up to court?

12:54:40 19 BY MR. DAVENPORT:

12:54:41 20 Q. For the interrogatories that you
12:54:42 21 referred to earlier, the thicker packet that you
12:54:45 22 reviewed that you said that, you know, wasn't one
12:54:48 23 of the four documents in front of you?

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12:54:56 1 I'm sorry.

12:54:56 2 MS. HUGGINS: There might just be

12:54:58 3 confusion --

12:54:58 4 MR. DAVENPORT: Yeah.

12:54:58 5 THE WITNESS: Yeah.

12:54:58 6 MS. HUGGINS: -- between the complaint and

12:54:59 7 interrogatories.

12:55:00 8 MR. DAVENPORT: No. No. I know. I know.

12:55:00 9 MS. HUGGINS: Yeah.

12:55:01 10 MR. DAVENPORT: I understand.

12:55:01 11 THE WITNESS: I don't --

12:55:02 12 MR. DAVENPORT: All right. So --

12:55:02 13 MS. HUGGINS: It's your examination, but,

12:55:04 14 I mean, if I can help clear it up, I will.

12:55:08 15 MR. DAVENPORT: Here you go.

12:55:11 16 Can we have this exhibit marked, please?

12:55:11 17 The following was marked for Identification:

18 EXH. 23 Verification page

12:55:11 19 BY MR. DAVENPORT:

12:55:53 20 Q. So I'm now showing you what has been

12:55:56 21 marked as Exhibit 23. Do you recognize that

12:55:58 22 document?

12:56:03 23 A. Yes.

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12:56:03 1 Q. Okay. Do you recall, was that document
12:56:09 2 given to you through the mail?

12:56:14 3 Was it given to you in person?

12:56:15 4 A. In person.

12:56:15 5 Q. Okay. And who gave you that document?

12:56:18 6 A. I don't know the dude's name. I've
12:56:23 7 never --

12:56:24 8 Q. Okay.

12:56:24 9 A. Yeah.

12:56:24 10 Q. Okay.

12:56:24 11 MS. HUGGINS: I think there's confusion
12:56:26 12 about what we're talking about right now.

12:56:27 13 MR. DAVENPORT: Sure. No. That -- no.
12:56:28 14 I understand. But he said that he recalled that
12:56:29 15 document, and he said he has seen it and that he
12:56:32 16 received it from some individual, so I'm just
12:56:34 17 asking questions about that document.

12:56:37 18 THE WITNESS: Was this part -- this was part
12:56:40 19 of the packet, right, that I --

12:56:41 20 MS. HUGGINS: Yeah, I think there's
12:56:44 21 confusion.

12:56:44 22 THE WITNESS: -- that I was served?

12:56:44 23 MS. HUGGINS: He's confused about the

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12:56:45 1 summons and complaint --

12:56:45 2 MR. DAVENPORT: I'll -- I'll clarify it.

12:56:46 3 MS. HUGGINS: -- versus this.

12:56:46 4 MR. DAVENPORT: I'll clarify it. Thank you.

12:56:49 5 So this exhibit has been marked as Exhibit

12:56:51 6 number 13. Do you recognize that document?

12:56:56 7 THE WITNESS: Yeah, I believe this is what

12:56:58 8 I was served with at my front doorstep, I think.

12:57:02 9 BY MR. DAVENPORT:

12:57:02 10 Q. Okay. So do you see in bold lettering

12:57:08 11 what that says?

12:57:09 12 A. Right here?

12:57:10 13 Q. Yes.

12:57:11 14 A. Yeah. Answer to first interrogatories

12:57:13 15 to defendants.

12:57:14 16 Q. And, Mr. Moriarity, are you familiar

12:57:17 17 with what a complaint is?

12:57:19 18 A. Yeah. Someone makes a complaint on

12:57:22 19 you.

12:57:22 20 Q. Like a -- a lawsuit complaint --

12:57:24 21 A. Okay.

12:57:24 22 Q. -- is part of a legal proceeding; do

12:57:28 23 you know what that is?

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12:57:28 1 A. If you want to explain it to me so

12:57:31 2 I understand --

12:57:31 3 Q. Yeah. Yeah.

12:57:31 4 A. -- better.

12:57:32 5 Q. Of course. Of course.

12:57:33 6 All right. So a legal complaint that
12:57:34 7 initiates the action, that would have been what you
12:57:37 8 had received on your front doorstep, that would
12:57:39 9 have been served to you, correct?

12:57:40 10 A. Okay. Yeah.

12:57:41 11 Q. So now what I'm asking is: These are
12:57:44 12 called interrogatories, so these probably would
12:57:48 13 have been a second document, a thicker document
12:57:51 14 that you would have reviewed.

12:57:52 15 A. Oh, okay. Okay.

12:57:54 16 Q. So now I guess what my question is:
12:57:58 17 Did you receive that thick packet and then later
12:58:02 18 receive another criminal -- or legal document that
12:58:06 19 kind of looks something like this?

12:58:09 20 MS. HUGGINS: Form.

12:58:09 21 THE WITNESS: I received this later then.

12:58:13 22 BY MR. DAVENPORT:

12:58:13 23 Q. Okay. So it would have been something

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12:58:14 1 that was received later?

12:58:15 2 A. Yeah.

12:58:16 3 Q. Okay. Now, was that received with this
12:58:19 4 verification?

12:58:22 5 MS. HUGGINS: Form.

12:58:23 6 THE WITNESS: That, I don't remember.

12:58:25 7 I mean, I -- I know that this is my signature.

12:58:28 8 BY MR. DAVENPORT:

12:58:28 9 Q. Okay.

12:58:28 10 A. And I'm not disputing that.

12:58:31 11 Q. No. No. Of course. Of course.

12:58:32 12 A. I don't remember when --

12:58:33 13 Q. Do you remember if this verification
12:58:34 14 was given with anything else? Any other documents
12:58:38 15 that would have been handed to you at that time?

12:58:41 16 MS. HUGGINS: Form.

12:58:41 17 THE WITNESS: I -- no, I -- I don't -- I
12:58:49 18 don't remember.

12:58:49 19 BY MR. DAVENPORT:

12:58:49 20 Q. Okay. I'm going to direct your
12:58:55 21 attention to page 4.

12:58:58 22 A. Page 4?

12:58:59 23 Q. Or let's see here.

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12:59:03 1 Excuse me. Page 5. And I want you to go to
12:59:06 2 demand number 2.

12:59:07 3 Now, that -- that interrogatory says,
12:59:10 4 identify the police officers shown in the video
12:59:13 5 attached as Exhibit A to the complaint.

12:59:14 6 Now, if I represent to you that Exhibit A to
12:59:17 7 the complaint is those four video segments that you
12:59:19 8 said that you have watched, are you able to
12:59:23 9 identify who those police officers are by watching
12:59:27 10 the video?

12:59:28 11 MS. HUGGINS: Form.

12:59:30 12 THE WITNESS: Some of them, yeah.

12:59:32 13 BY MR. DAVENPORT:

12:59:32 14 Q. Okay. Who were you able to identify
12:59:35 15 when watching the video?

12:59:37 16 MS. HUGGINS: Form.

12:59:37 17 THE WITNESS: Karl. And then the other two,
12:59:43 18 Lauren and Jenny, I would get confused.

12:59:45 19 BY MR. DAVENPORT:

12:59:45 20 Q. Okay. But you knew that they were
12:59:48 21 there?

12:59:48 22 A. I knew that they were there, yeah.

12:59:50 23 Q. Okay. Did you know -- did you watch --

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12:59:52 1 there was a fourth video segment that was provided?

12:59:54 2 A. I don't remember which video was the
12:59:56 3 fourth.

12:59:57 4 Q. Okay. Did you watch a video segment
12:59:59 5 where there was a fifth police officer on scene?

13:00:01 6 A. Yes.

13:00:01 7 Q. And did you know, when watching that
13:00:04 8 video, who that individual officer was?

13:00:06 9 A. No. I -- I -- I forgot who showed up
13:00:09 10 on scene.

13:00:09 11 Q. Okay. Okay.

13:00:10 12 A. And when the video was replayed, it was
13:00:14 13 also what the -- the department refers to as
13:00:17 14 double-up day, so both shifts are working, and
13:00:21 15 I don't remember who all was on those shifts
13:00:23 16 because people get promoted or transferred.

13:00:27 17 Q. Okay. Now, have you later learned who
13:00:28 18 that fifth individual was?

13:00:30 19 A. Yes.

13:00:30 20 Q. Was that individual's name David
13:00:32 21 Santana?

13:00:33 22 A. Yes.

13:00:33 23 Q. Now, is that somebody that you had

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13:00:35 1 worked with before?

13:00:37 2 A. Yeah, he was. And like I said, I'm
13:00:40 3 about a week old on here.

13:00:42 4 Q. Okay.

13:00:42 5 A. So I had just basically met him.

13:00:46 6 Q. Okay.

13:00:48 7 A. So I -- I did forget that he was even
13:00:51 8 on scene, but then looking at the video, I mean, it
13:00:55 9 kind of took a little bit to realize it was him.

13:01:01 10 Q. So David Santana, is that somebody that
13:01:05 11 you worked with after the incident on January 1st
13:01:08 12 of 2017?

13:01:08 13 A. Only the 16 weeks --

13:01:10 14 Q. Okay.

13:01:10 15 A. -- that I worked with him.

13:01:12 16 Q. Okay. So he would have been somebody
13:01:16 17 that worked on a different shift or a different --

13:01:18 18 A. He -- he would have been the same
13:01:20 19 shift.

13:01:21 20 Q. He would have been the same shift, but
13:01:23 21 would he also work the same days that you work?

13:01:26 22 A. The same, yep.

13:01:26 23 Q. Okay.

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13:01:26 1 A. Same days.

13:01:28 2 Q. Okay. Do you recall from the video
13:01:30 3 whether he was driving with somebody or whether he
13:01:32 4 was by himself?

13:01:32 5 A. I don't.

13:01:33 6 Q. Okay. If I represented to you that he
13:01:37 7 was driving by himself, would you have any reason
13:01:39 8 to dispute that?

13:01:40 9 MS. HUGGINS: Form.

13:01:43 10 THE WITNESS: No, but again, I mean, I don't
13:01:45 11 know what other people were doing.

13:01:47 12 BY MR. DAVENPORT:

13:01:48 13 Q. No. Sure. Sure.

13:01:49 14 A. Yeah.

13:01:49 15 Q. Would there be any reason why he would
13:01:51 16 be driving a Dodge Charger or a Charger rather than
13:01:56 17 the Chevy Tahoe that you and the other car were
13:02:01 18 driving?

13:02:02 19 A. Could be a number of reasons. I don't
13:02:03 20 know what the car situation was back then.

13:02:06 21 MR. DAVENPORT: Okay. Okay. So if we could
13:02:11 22 just go to the video.

13:02:12 23 And then we can go off the record really

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13:02:14 1 quickly.

2 THE VIDEOGRAPHER: Sure.

3 MR. DAVENPORT: Okay.

4 THE WITNESS: And can we take a break?

5 MR. DAVENPORT: Yeah. Yeah. Of course.

6 Of course.

7 (A recess was then taken at 1:02 p.m.)

13:16:28 8 (On the record at 1:16 p.m.)

13:16:28 9 MR. DAVENPORT: So, now, Mr. Moriarity, we
13:16:31 10 are going to watch the third video segment that has

13:16:33 11 been provided by the plaintiff during discovery.

13:16:36 12 The last four digits of that video are 2529.

13:16:36 13 Now can we please direct the camera towards
13:16:36 14 the TV screen?

13:16:52 15 Perfect. Thank you.

13:16:54 16 So before we start the video, where is
13:16:58 17 the -- is there an individual that is standing in
13:17:00 18 the street?

13:17:00 19 THE WITNESS: Yes.

13:17:02 20 BY MR. DAVENPORT:

13:17:02 21 Q. Where is that individual standing?

13:17:05 22 MS. HUGGINS: Form.

13:17:07 23 THE WITNESS: From the video, in the middle

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13:17:10 1 of the street.

13:17:10 2 BY MR. DAVENPORT:

13:17:10 3 Q. Okay. Is he standing in front of your
13:17:13 4 police vehicle or the other police vehicle?

13:17:19 5 A. It looks like from the video's
13:17:21 6 perspective, in front of my vehicle.

13:17:27 7 Q. Okay. What direction is this
13:17:28 8 individual facing?

13:17:29 9 A. South.

13:17:30 10 Q. Okay. And is that just based off of
13:17:33 11 your recollection of Schmarbeck Avenue, or is that
13:17:36 12 based off of any reference point on the video that
13:17:41 13 you know that that direction he's facing is south?

13:17:43 14 A. No. It's based off of my knowledge of
13:17:45 15 C District streets.

13:17:46 16 Q. Okay. And what direction is your car
13:17:49 17 facing?

13:17:50 18 A. North.

13:17:51 19 MR. DAVENPORT: Okay. Now I'm going to play
13:17:54 20 the video.

13:18:08 21 (Video clip played.)

13:18:08 22 BY MR. DAVENPORT:

13:18:09 23 Q. Now, what direction was that individual

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13:18:12 1 walking for the first three seconds of the video?

13:18:19 2 A. South.

13:18:20 3 Q. Okay. And your car is moving or is it
13:18:22 4 stationary?

13:18:23 5 A. Stationary, still.

13:18:24 6 Q. Okay. So now what would be your
13:18:27 7 typical thing that you would do next, if you saw an
13:18:31 8 individual that was walking towards your police
13:18:33 9 vehicle and you were still stopped and -- and
13:18:36 10 hadn't been in motion?

13:18:38 11 MS. HUGGINS: Form.

13:18:38 12 THE WITNESS: Well, at the time, you
13:18:40 13 don't -- you can't say if you know that he's
13:18:42 14 walking towards my police vehicle or towards the
13:18:45 15 sidewalk or, you know, behind my police vehicle,
13:18:47 16 but I'm thinking officer safety.

13:18:52 17 BY MR. DAVENPORT:

13:18:52 18 Q. Okay.

13:18:52 19 A. But at that -- at that time, you know,
13:18:53 20 years ago, I don't remember what I was thinking.

13:18:55 21 Q. Okay. But the individual did take
13:19:01 22 a few steps, and he did -- he was closer to your
13:19:05 23 police vehicle than he was at the beginning of the

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13:19:08 1 video, correct?

13:19:08 2 A. Yes.

13:19:09 3 Q. Okay. Now -- now, we're still on three
13:19:23 4 seconds of the video. Your video -- your car has
13:19:26 5 gone into motion at this point, correct? It
13:19:28 6 started moving forward?

13:19:29 7 A. Yes.

13:19:29 8 Q. And where is the individual at this
13:19:32 9 point with reference to your police vehicle?

13:19:37 10 A. The driver's side, in between my truck
13:19:41 11 and the grass.

13:19:43 12 Q. Okay. Now, what I want you to do is
13:19:46 13 I want you to make reference of the time stamp, and
13:19:49 14 I don't want you to verify its accuracy. I just
13:19:52 15 want you to look at what the time is.

13:19:55 16 Would you agree that is 10:25:32 when your
13:19:58 17 car first starts in motion?

13:20:00 18 MS. HUGGINS: Form.

13:20:03 19 THE WITNESS: Based on this video and the
13:20:06 20 numbers that are on the screen, it says 10:25:32.

13:20:12 21 BY MR. DAVENPORT:

13:20:12 22 Q. Okay. Now, focusing on your car --

13:20:18 23 A. You said focusing on my car?

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13:20:20 1 Q. Yes. Oh, I'm sorry. We'll -- we'll
13:20:22 2 play it again. I'll start it from three seconds.

13:20:27 3 Well, we'll start it from three seconds.

13:20:27 4 THE WITNESS: Yeah.

13:20:27 5 (Video clip played.)

13:20:27 6 BY MR. DAVENPORT:

13:20:29 7 Q. Now, focusing on your car, I want you
13:20:31 8 to tell me when it is off the screen. And I'll do
13:20:35 9 my best to stop the video when your car is out of
13:20:39 10 the scene.

13:20:39 11 MS. HUGGINS: Form.

13:20:40 12 THE WITNESS: All right.

13:20:45 13 BY MR. DAVENPORT:

13:20:46 14 Q. Now, do you see on that top time stamp
13:20:48 15 what the time is?

13:20:50 16 A. Yeah. The top time stamp on the -- the
13:20:54 17 video is 10:25:37.

13:20:57 18 Q. Okay. So 10:25:37.

13:20:59 19 And when you first started in motion, it was
13:21:01 20 10:25:32, correct?

13:21:05 21 A. Yeah.

13:21:05 22 MR. DAVENPORT: Okay. So now what I want
13:21:11 23 you to do -- well, I want to play a second video.

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13:21:11 1 (Discussion off the record.)

13:21:11 2 (Video clip played.)

13:21:11 3 BY MR. DAVENPORT:

13:23:00 4 Q. Now, assuming that these cameras are
13:23:02 5 calibrated where the times are accurately
13:23:04 6 reflecting each other -- they don't have to be
13:23:06 7 accurate in terms of what time it actually is, but
13:23:08 8 just assuming that they're all calibrated together,
13:23:11 9 what is the time stamp in that top video frame
13:23:14 10 right there?

13:23:15 11 MS. HUGGINS: Form.

13:23:16 12 THE WITNESS: Again, don't want to speculate
13:23:21 13 or assume anything, but the time on that screen is
13:23:26 14 10:25:38.

13:23:28 15 BY MR. DAVENPORT:

13:23:28 16 Q. Okay. Now, your car, although it was
13:23:30 17 in the camera view one second before, so that would
13:23:34 18 have been -- well, hold on.

13:23:37 19 Now, would you agree with me that your car
13:23:39 20 is in view at 10:25:36?

13:23:44 21 A. Yes.

13:23:44 22 MR. DAVENPORT: Okay. Now watching the
13:23:46 23 video, would you agree that your car --

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13:23:46 1 (Discussion off the record.)

13:23:46 2 BY MR. DAVENPORT:

13:23:59 3 Q. All right. Now, would you agree that
13:23:59 4 at 10:25:38, your car is outside of the view of the
13:24:03 5 camera?

13:24:04 6 A. Yes.

13:24:04 7 MS. HUGGINS: Form.

13:24:04 8 THE WITNESS: Yes.

13:24:05 9 BY MR. DAVENPORT:

13:24:06 10 Q. Okay. Now, I want you to pay attention
13:24:09 11 and see when the next time your police vehicle is
13:24:13 12 in the view of the camera.

13:24:19 13 A. Okay.

13:24:24 14 Yeah. 44, I think.

13:24:27 15 Q. Okay.

13:24:27 16 A. 10:25:44.

13:24:29 17 Q. Okay. So the time stamp in the top
13:24:32 18 would have been 10:25:44, correct?

13:24:35 19 A. Yeah.

13:24:35 20 MR. DAVENPORT: Okay.

13:24:43 21 (Discussion off the record.)

13:24:43 22 MS. HUGGINS: Do you want to identify the
13:24:44 23 discs that you've played for the record?

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13:24:45 1 MR. DAVENPORT: Sure. So the disc that
13:24:46 2 I just played was Exhibit 12. It is Exhibit A
13:24:51 3 supplement that was provided by the plaintiffs.

13:24:56 4 We are now playing Exhibit 11, which was
13:24:58 5 also provided by the plaintiffs.

13:24:58 6 (Video clip played.)

13:24:58 7 BY MR. DAVENPORT:

13:25:20 8 Q. So now I am playing again what has been
13:25:23 9 marked as Exhibit 11, for purposes of the
13:25:26 10 deposition. The last four digits are 2529.

13:25:31 11 Now, what I want you to pay attention to is
13:25:34 12 when the first instance that you would consider
13:25:37 13 contact has been made between Mr. Kistner and
13:25:41 14 Ms. Velez and Ms. McDermott's vehicle.

13:25:45 15 A. Okay.

13:25:51 16 MS. HUGGINS: Wait for a question.

13:25:52 17 BY MR. DAVENPORT:

13:25:52 18 Q. What time is that?

13:25:54 19 What time -- what's the time stamp in the
13:25:55 20 top part of the video?

13:25:58 21 MS. HUGGINS: Form.

13:25:58 22 THE WITNESS: 10:25:36.

13:26:02 23 BY MR. DAVENPORT:

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13:26:02 1 Q. Okay. Would you agree with me that
13:26:04 2 your vehicle is still in view at that point at
13:26:09 3 10:25:36?

13:26:10 4 A. Yeah. Yes.

13:26:11 5 Q. Okay. Now, would you agree with me
13:26:13 6 that based on the other camera angle, you did not
13:26:17 7 appear back within view until 10:25:44?

13:26:22 8 MS. HUGGINS: Form.

13:26:22 9 THE WITNESS: Yeah, that's correct.

13:26:24 10 BY MR. DAVENPORT:

13:26:24 11 Q. And that would have been eight seconds
13:26:26 12 after initial contact was made between Mr. Kistner
13:26:28 13 and that vehicle, correct?

13:26:29 14 MS. HUGGINS: Form. I'd object to -- we've
13:26:34 15 already indicated that we're not -- the accuracy of
13:26:37 16 these time stamps has not been verified in any way.

13:26:42 17 BY MR. DAVENPORT:

13:26:42 18 Q. You can answer the question.

13:26:43 19 A. Can you -- can you repeat the question
13:26:46 20 again?

13:26:46 21 MR. DAVENPORT: Sure.

13:26:47 22 Can you read back the question that I just
13:26:49 23 asked?

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13:26:49 1 (The above-requested portion was then read
13:27:10 2 by the reporter.)

13:27:10 3 MS. HUGGINS: Same -- same form objection.

13:27:13 4 THE WITNESS: Yeah. Yes, as per that time
13:27:17 5 on the camera.

13:27:19 6 BY MR. DAVENPORT:

13:27:19 7 Q. Okay. So now assuming that you were
13:27:21 8 moving forward for six of those seconds, you
13:27:26 9 weren't stopped at the point that contact was made
13:27:28 10 between Mr. Kistner and the police vehicle,
13:27:30 11 correct?

13:27:30 12 MS. HUGGINS: Form.

13:27:32 13 THE WITNESS: No.

13:27:33 14 BY MR. DAVENPORT:

13:27:34 15 Q. Okay. Would you have been looking into
13:27:37 16 your driver's side mirror at this point?

13:27:41 17 A. Like I said earlier, I -- I could have
13:27:43 18 been looking at the mirror or forward, but I do
13:27:49 19 remember at some point looking at the driver's side
13:27:52 20 mirror and seeing what I thought I saw.

13:27:56 21 Q. So now assuming that you saw
13:27:59 22 Mr. Kistner make contact with the vehicle, you're
13:28:01 23 still driving forward for a few seconds, correct?

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13:28:04 1 MS. HUGGINS: Form.

13:28:04 2 THE WITNESS: Correct.

13:28:06 3 BY MR. DAVENPORT:

13:28:06 4 Q. So why didn't you stop after contact

13:28:08 5 was made between Mr. Kistner and the police

13:28:10 6 vehicle?

13:28:10 7 MS. HUGGINS: Form.

13:28:10 8 THE WITNESS: Well, because you have to come

13:28:12 9 to a safe stop. You can't just slam on the brakes

13:28:15 10 and slam your head into the steering wheel. You

13:28:18 11 know what I mean? You still have to stop.

13:28:21 12 BY MR. DAVENPORT:

13:28:21 13 Q. Okay. And it would have taken you,

13:28:24 14 let's assume, eight seconds to come back?

13:28:26 15 MS. HUGGINS: Form.

13:28:27 16 BY MR. DAVENPORT:

13:28:28 17 Q. To stop your car and come back, that

13:28:30 18 would be a safe stop?

13:28:31 19 MS. HUGGINS: Form.

13:28:32 20 THE WITNESS: Yeah.

13:28:32 21 BY MR. DAVENPORT:

13:28:32 22 Q. Okay. Now, let's assume that your

13:28:35 23 vehicle is moving away from the incident as it's

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13:28:37 1 happening. What -- do you think that what you
13:28:43 2 would be able to see would be distorted if you're
13:28:47 3 moving away from a scene rather than closer to
13:28:49 4 a scene?

13:28:50 5 MS. HUGGINS: Form.

13:28:50 6 THE WITNESS: You know, your eyes see what
13:28:54 7 they see, so I don't -- I can't speak on what can
13:28:58 8 be distorted and all that.

13:29:03 9 BY MR. DAVENPORT:

13:29:03 10 Q. But you saw Mr. Kistner make contact
13:29:06 11 with the vehicle?

13:29:07 12 MS. HUGGINS: Form. Asked and answered.

13:29:09 13 THE WITNESS: Yeah.

13:29:10 14 BY MR. DAVENPORT:

13:29:10 15 Q. And then you kept on driving forward?

13:29:12 16 MS. HUGGINS: Form.

13:29:12 17 THE WITNESS: I was slowing down to a stop
13:29:14 18 and then reversing, yeah.

13:29:15 19 BY MR. DAVENPORT:

13:29:15 20 Q. Was Karl Schultz telling you to stop at
13:29:18 21 that point?

13:29:18 22 A. Like I said, I don't -- I don't
13:29:21 23 remember if he told me to stop. I think I -- I

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13:29:24 1 think I just kind of stopped.

13:29:26 2 Q. Okay. Are you talking at all with Karl
13:29:31 3 Schultz as contact is initially made between the
13:29:33 4 police vehicle and Mr. Kistner?

13:29:34 5 MS. HUGGINS: Form.

13:29:35 6 THE WITNESS: As I already stated, I think --
13:29:40 7 I think we both -- I think either I said something,
13:29:44 8 he said something, or maybe we both said something
13:29:47 9 about what we thought we just saw.

13:29:50 10 BY MR. DAVENPORT:

13:29:50 11 Q. Okay. Now, I want you to watch again
13:30:02 12 the collision that is made between Mr. Kistner and
13:30:04 13 between the police vehicle, and I want you to tell
13:30:08 14 me if you still think that Mr. Kistner was the one
13:30:12 15 that threw himself at the police vehicle.

13:30:14 16 MS. HUGGINS: Form.

13:30:21 17 (Video clip played.)

13:30:21 18 BY MR. DAVENPORT:

13:30:21 19 Q. Does it look like Mr. Kistner threw
13:30:23 20 himself at that police vehicle?

13:30:24 21 MS. HUGGINS: Form.

13:30:24 22 THE WITNESS: Again, we're looking at
13:30:27 23 a camera at a different angle. What I saw from my

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13:30:31 1 perspective, it looked like he threw himself at the
13:30:36 2 vehicle.

13:30:37 3 BY MR. DAVENPORT:

13:30:37 4 Q. But, again --

13:30:38 5 A. So --

13:30:39 6 Q. -- your perspective was you looking in
13:30:41 7 your driver's side mirror, as you were driving
13:30:43 8 forward.

13:30:43 9 A. Correct.

13:30:43 10 Q. And you were driving forward for eight
13:30:45 11 seconds after initial contact was made.

13:30:49 12 A. That is correct.

13:30:50 13 MS. HUGGINS: Form.

13:30:50 14 BY MR. DAVENPORT:

13:30:50 15 Q. Okay. Now, after contact was made, did
13:30:52 16 you notice that police vehicle moving forward at
13:30:56 17 all?

13:30:56 18 I can replay it if you need me to.

13:30:59 19 A. I -- I just need you to say that
13:31:01 20 question again. What do you mean?

13:31:03 21 Q. Okay.

13:31:04 22 MS. HUGGINS: Can you read it back, Anne?

13:31:04 23 (The above-requested portion was then read

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13:31:24 1 by the reporter.)

13:31:24 2 THE WITNESS: By this video, at this angle,
13:31:28 3 that's what it looks like.

13:31:30 4 BY MR. DAVENPORT:

13:31:30 5 Q. Okay.

13:31:30 6 A. But from what I saw when -- again, when
13:31:33 7 I was looking in my mirror, that's not what I saw.

13:31:35 8 Q. Okay. Did anybody talk with -- did
13:31:41 9 either you or Karl Schultz talk with Lauren
13:31:44 10 McDermott and Jenny Velez to see what they saw?

13:31:45 11 A. I -- I would have never have done that.
13:31:48 12 Again, because I was so brand new, I deferred
13:31:51 13 everything to -- to the other officers.

13:31:54 14 MR. DAVENPORT: Okay. Now, I want you to
13:32:16 15 watch.

13:32:16 16 (Video clip played.)

13:32:16 17 BY MR. DAVENPORT:

13:32:18 18 Q. Who is that individual that just came
13:32:21 19 into the scene right here?

13:32:23 20 A. At the time, I -- I didn't know, and,
13:32:32 21 again, I -- I don't think we ever took down info.
13:32:38 22 I'm pretty sure it -- it was his son -- it's his
13:32:40 23 son.

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13:32:43 1 Q. Okay. Would it be normal for somebody
13:32:45 2 to run out after their father after they've been
13:32:48 3 hit by a police vehicle?

13:32:48 4 MS. HUGGINS: Form.

13:32:50 5 THE WITNESS: You can't -- you can't just
13:32:53 6 determine that from -- from not knowing who he is
13:32:55 7 or anything like that. You know what I mean?
13:32:57 8 I don't -- I don't -- I don't know who he is.

13:32:58 9 BY MR. DAVENPORT:

13:32:58 10 Q. But after you came to -- because you
13:33:00 11 did say that you came to learn that --

13:33:00 12 A. Yeah. Yeah.

13:33:02 13 Q. -- he may have been his son or --

13:33:03 14 A. So --

13:33:04 15 Q. -- related to him, that it would have
13:33:07 16 been normal for him to run out after his father
13:33:09 17 after he's been hit?

13:33:11 18 MS. HUGGINS: Form. Asked and answered, and
13:33:11 19 misstates the testimony.

13:33:12 20 THE WITNESS: It's normal for some people.
13:33:14 21 It's normal -- not normal for other people.
13:33:14 22 I mean --

13:33:15 23 BY MR. DAVENPORT:

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13:33:15 1 Q. Would you run out after your father, if
13:33:17 2 he was hit by a police vehicle?

13:33:18 3 A. Again, it's normal for some people.
13:33:20 4 It's normal -- not normal for --

13:33:22 5 Q. I'm asking you for what you would
13:33:25 6 specifically do.

13:33:25 7 A. I'm -- I'm going -- I'm going to answer.

13:33:25 8 MS. HUGGINS: Form.

13:33:27 9 THE WITNESS: Just let me answer.

13:33:27 10 BY MR. DAVENPORT:

13:33:28 11 Q. Okay.

13:33:28 12 A. It's normal for some people. It's not
13:33:30 13 normal for other people. I would. There's other
13:33:31 14 people that I've seen that don't really care. So
13:33:34 15 it is normal but it's also not normal.

13:33:36 16 Q. Okay. Now, at this point he runs out
13:33:40 17 and he stops really quickly. At this point would
13:33:44 18 you say that he's made any threatening motions or
13:33:46 19 anything that would make you concerned for your
13:33:48 20 safety?

13:33:49 21 MS. HUGGINS: Form.

13:33:50 22 THE WITNESS: No.

13:33:51 23 BY MR. DAVENPORT:

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13:33:51 1 Q. Okay. Now he runs out again -- well,
13:33:54 2 he's not even running at this point. He's just
13:33:57 3 kind of inching his way over to see what his
13:33:59 4 father's doing.

13:34:00 5 Is he at all concerned with what you or the
13:34:02 6 other officers are doing, or is he just trying to
13:34:05 7 see what his father's doing on the other side of
13:34:07 8 the police vehicle?

13:34:07 9 MS. HUGGINS: Form. Calls for speculation.

13:34:10 10 THE WITNESS: Yeah, I mean, I don't -- I
13:34:12 11 don't know what he's doing. He's not concerned
13:34:14 12 with the officers, though.

13:34:15 13 BY MR. DAVENPORT:

13:34:15 14 Q. Okay.

13:34:16 15 A. It doesn't -- it doesn't look like he
13:34:19 16 is.

13:34:19 17 Q. Now what's he doing there?
13:34:22 18 What do you think he's doing, based on the
13:34:24 19 video?

13:34:24 20 MS. HUGGINS: Form.

13:34:24 21 THE WITNESS: Bending over.

13:34:25 22 MS. HUGGINS: Compound question.

13:34:26 23 BY MR. DAVENPORT:

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13:34:26 1 Q. Based on the video, why would he be
13:34:28 2 bending over?

13:34:29 3 MS. HUGGINS: Form.

13:34:30 4 THE WITNESS: I -- I can't answer why he's
13:34:31 5 bending over. He could -- yeah. I mean, he could
13:34:34 6 be checking on his dad.

13:34:36 7 BY MR. DAVENPORT:

13:34:36 8 Q. Well, his father's on the ground,
13:34:38 9 right?

13:34:39 10 A. Yeah.

13:34:39 11 Q. Do you think maybe he's bending down to
13:34:41 12 get a better vantage point of his father?

13:34:44 13 A. Yeah.

13:34:44 14 MS. HUGGINS: Form.

13:34:44 15 THE WITNESS: I just said that he could be
13:34:46 16 checking on his dad.

13:34:48 17 BY MR. DAVENPORT:

13:34:48 18 Q. Okay. Now, at this point he walks
13:34:50 19 right past the officers, correct?

13:34:52 20 A. Yes.

13:34:52 21 Q. At this point has he made any
13:34:55 22 threatening motions or anything -- threatening
13:34:57 23 maneuvers that would cause the police officers

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13:34:59 1 concern?

13:35:04 2 A. No.

13:35:05 3 Q. Okay. Now, he walks back towards the
13:35:13 4 sidewalk, correct?

13:35:15 5 A. Yeah.

13:35:15 6 Q. Would you consider him to now be in the
13:35:17 7 scene of a police incident?

13:35:22 8 A. No.

13:35:22 9 Q. Okay. At any point before he left the
13:35:30 10 view of that camera, would you consider him to be
13:35:32 11 in the scene of a police -- police incident?

13:35:35 12 MS. HUGGINS: Form.

13:35:37 13 THE WITNESS: At the time and how brand new
13:35:41 14 I was, I would say no.

13:35:43 15 I would say, given my time on the job now,
13:35:46 16 he was in the scene at one point in time and now
13:35:49 17 he's no longer in the scene.

13:35:50 18 BY MR. DAVENPORT:

13:35:50 19 Q. Okay. Has he made any sort of
13:35:53 20 threatening motions or any sort of movements that
13:35:56 21 would cause you alarm?

13:35:57 22 A. No.

13:36:02 23 MR. DAVENPORT: Okay. Now, I want you to

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13:36:03 1 watch and see if this individual appears back in
13:36:05 2 the screen.

13:36:05 3 (Video clip played.)

13:36:32 4 THE WITNESS: So wherever that was -- what
13:36:34 5 was that? 42?

13:36:35 6 BY MR. DAVENPORT:

13:36:35 7 Q. Yes. We'll say 10:26:42, he's back in
13:36:38 8 the scene?

13:36:39 9 MS. HUGGINS: Form.

13:36:40 10 BY MR. DAVENPORT:

13:36:41 11 Q. Is he in the scene at this point?
13:36:43 12 Police scene.

13:36:43 13 A. On the -- on the -- wait. Say that
13:36:46 14 again.

13:36:47 15 Q. Is this individual in the police scene
13:36:49 16 at 10:40 -- 10:26:42?

13:36:52 17 A. He's in the -- the view of the camera.
13:36:53 18 I wouldn't say he's in the scene.

13:36:57 19 Q. Okay. At any point does he enter the
13:37:00 20 police scene?

13:37:08 21 At any point before I stopped?

13:37:10 22 A. No, but there's some type of contact
13:37:14 23 made. It looks like --

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13:37:14 1 Q. When --

13:37:16 2 A. It looks like there's some type of
13:37:18 3 contact made either between the officer and him or
13:37:21 4 him and the officer.

13:37:23 5 Q. Now, when you say contact, what are you
13:37:26 6 referring to?

13:37:28 7 A. Maybe he said something or the officer
13:37:32 8 said something to him. I don't know.

13:37:34 9 Q. Okay. So contact refers to something
13:37:35 10 that is verbally said.

13:37:37 11 MS. HUGGINS: Form.

13:37:38 12 THE WITNESS: Verbally, physically, yeah,
13:37:41 13 but in this scenario, verbal.

13:37:44 14 BY MR. DAVENPORT:

13:37:44 15 Q. Okay.

13:37:44 16 A. Some -- something -- something made the
13:37:45 17 officer direct his attention to the male.

13:37:50 18 Q. Okay.

13:37:51 19 A. Something.

13:37:51 20 Q. Now, I understand that it might be
13:37:53 21 different from what you saw that day, but now
13:37:55 22 watching the video, what does it appear that that
13:38:01 23 individual is doing?

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13:38:01 1 MS. HUGGINS: Form.

13:38:02 2 THE WITNESS: It appears as though he's on
13:38:04 3 his phone.

13:38:04 4 BY MR. DAVENPORT:

13:38:04 5 Q. Okay. Do you have any reason to know
13:38:07 6 today why he was on his phone at that time?

13:38:12 7 A. I -- I can't speculate why he's on his
13:38:17 8 phone. I don't know.

13:38:17 9 Q. Would that be something that's a
13:38:19 10 threatening motion made?

13:38:21 11 A. No.

13:38:21 12 Q. For a police officer, if somebody was
13:38:24 13 on their phone?

13:38:25 14 A. No.

13:38:32 15 Q. Okay. Now, when initial contact is
13:38:33 16 made between a police officer and this individual,
13:38:35 17 would you have to do some sort of a visual
13:38:37 18 assessment?

13:38:38 19 A. Can you explain that?

13:38:39 20 MS. HUGGINS: Form.

13:38:40 21 BY MR. DAVENPORT:

13:38:40 22 Q. Well, you -- you were saying that
13:38:41 23 contact has been made between the police officer

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13:38:43 1 and this individual.

13:38:46 2 What would be the next steps after that
13:38:47 3 contact is made in this situation?

13:38:50 4 MS. HUGGINS: Form. Are you asking what
13:38:52 5 happened or procedure?

13:38:53 6 MR. DAVENPORT: Procedure.

13:38:54 7 MS. HUGGINS: Form.

13:38:55 8 THE WITNESS: That can be dictated by other
13:39:00 9 variables. I don't know what is about to be said
13:39:04 10 or what the subject does or acts out.

13:39:10 11 BY MR. DAVENPORT:

13:39:10 12 Q. Okay. So let's say in this situation,
13:39:15 13 an individual is on their cell phone and contact
13:39:19 14 has been made between the police officer and this
13:39:22 15 individual.

13:39:22 16 What should the next steps be in this
13:39:25 17 situation, knowing that some individual has been
13:39:30 18 contacted by a police vehicle?

13:39:31 19 MS. HUGGINS: Form.

13:39:33 20 THE WITNESS: Well, I'm confused if you're
13:39:38 21 asking about two different things. About the --
13:39:42 22 the officers with the subject who --

13:39:47 23 BY MR. DAVENPORT:

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13:39:47 1 Q. Oh, no. I'm --

13:39:49 2 A. -- was contacted by the police vehicle
13:39:51 3 or -- or the subject that was contacted by this
13:39:53 4 officer. What are you -- what are you talking
13:39:55 5 about? Which one?

13:39:57 6 Q. So I'm not talking about the individual
13:39:58 7 that was contacted by the police vehicle. We were
13:40:01 8 talking about the contact that is made between the
13:40:03 9 individual who is on his phone and the individual --
13:40:06 10 the police officer who was out in the street.

13:40:09 11 What I want to know is --

13:40:10 12 A. Yeah. There's --

13:40:11 13 Q. -- in this situation, you know, what --
13:40:12 14 what should he be doing if an individual is on his
13:40:15 15 phone after somebody, possibly his father, has been
13:40:18 16 struck by a police vehicle?

13:40:19 17 MS. HUGGINS: Form.

13:40:19 18 THE WITNESS: There's -- there's no written
13:40:21 19 procedure. You can speak to him and leave. You
13:40:25 20 can speak to him and stay. You can -- I don't know
13:40:28 21 what they're talking about.

13:40:30 22 BY MR. DAVENPORT:

13:40:31 23 Q. Okay. Well, would there be any reason

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13:40:33 1 to take that cell phone from that individual?

13:40:35 2 MS. HUGGINS: Form.

13:40:37 3 THE WITNESS: It -- it -- no, not right now.

13:40:42 4 BY MR. DAVENPORT:

13:40:43 5 Q. Okay. Would there be any reason --

13:40:49 6 well, we'll keep on watching.

13:40:56 7 So now an individual -- this individual is,

13:41:00 8 would you agree, walking away from the police

13:41:03 9 officer that first made contact with him?

13:41:05 10 A. Mm-hmm. I'm sorry. Yes.

13:41:08 11 Q. And would you agree that he is still on

13:41:10 12 his cell phone at this point?

13:41:13 13 A. Yes.

13:41:13 14 Q. Okay. Now, what reasons would the

13:41:15 15 police officer have to go to that individual while

13:41:19 16 he's on his cell phone?

13:41:21 17 MS. HUGGINS: Form.

13:41:23 18 THE WITNESS: I can't --

13:41:23 19 MS. HUGGINS: Calls for speculation.

13:41:25 20 THE WITNESS: Yeah. I can't speculate

13:41:25 21 for -- and that's --

13:41:25 22 BY MR. DAVENPORT:

13:41:25 23 Q. Well, you were there.

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13:41:25 1 A. That's --

13:41:26 2 Q. You were there.

13:41:26 3 A. Well, let me -- let me talk.

13:41:28 4 MS. HUGGINS: Form.

13:41:29 5 THE WITNESS: I can't speculate for what
13:41:33 6 Karl's doing, but you can, in many scenarios, when
13:41:37 7 someone's walking away, detain them for whatever
13:41:41 8 reason. Whatever reason is -- is legal in that
13:41:44 9 moment.

13:41:46 10 And for you to say that I was there, I wasn't.
13:41:48 11 I was over at a totally different vehicle.

13:41:50 12 BY MR. DAVENPORT:

13:41:50 13 Q. Okay.

13:41:50 14 A. So I don't know what they were talking
13:41:52 15 about. That's speculation.

13:41:53 16 Q. Okay. So now this individual is
13:41:55 17 walking away from Karl Schultz, and Karl Schultz is
13:41:58 18 walking towards him. I mean, this guy's still on
13:42:02 19 his cell phone, correct?

13:42:03 20 What -- what possible things could he have
13:42:04 21 said where Karl Schultz would still be following
13:42:06 22 after him?

13:42:07 23 MS. HUGGINS: Form. There's a lot of

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13:42:09 1 foundational problems with that question. It's
13:42:11 2 compound. It's --

13:42:11 3 MR. DAVENPORT: It's a deposition. He can
13:42:13 4 answer the question.

13:42:14 5 You can -- you can move to strike it if you
13:42:16 6 would like, but he can answer the question.

13:42:18 7 MS. HUGGINS: You have to ask -- ask proper
13:42:19 8 questions.

13:42:19 9 MR. DAVENPORT: It's a proper question.

13:42:21 10 I'm asking -- he's on his cell phone. He's
13:42:23 11 walking away from Karl Schultz. What possible
13:42:26 12 things could he have said that would need Karl
13:42:29 13 Schultz to keep on walking after him?

13:42:31 14 MS. HUGGINS: Form. It calls for
13:42:32 15 speculation, and it's a compound question.

13:42:33 16 MR. DAVENPORT: I'm just asking what things
13:42:35 17 could have possibly been said. He can answer the
13:42:37 18 question.

13:42:38 19 THE WITNESS: I would still defer to Karl
13:42:40 20 Schultz. I -- I don't know --

13:42:40 21 BY MR. DAVENPORT:

13:42:40 22 Q. Would there be any reason --

13:42:43 23 A. -- what was said.

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13:42:44 1 Q. -- why you would go?

13:42:45 2 MS. HUGGINS: Allow him to finish an answer.

13:42:48 3 THE WITNESS: I don't know what was said.

13:42:53 4 In many different scenarios I've just let

13:42:57 5 people walk away. In other scenarios I've kept

13:43:00 6 them on scene.

13:43:01 7 I don't know. I don't know -- I don't know

13:43:01 8 what was said during the interaction between Karl

13:43:05 9 and the subject, so I don't know.

13:43:08 10 BY MR. DAVENPORT:

13:43:08 11 Q. Now, situations where you have kept the

13:43:10 12 person on scene, what types of things did that

13:43:13 13 individual say?

13:43:14 14 MS. HUGGINS: Form.

13:43:16 15 THE WITNESS: They could say something

13:43:19 16 specific to the scene, and -- I don't know -- maybe

13:43:25 17 they -- they witnessed something and you need

13:43:28 18 a statement from them.

13:43:28 19 Maybe -- maybe they said something that

13:43:34 20 would elicit a disorderly conduct penal law charge

13:43:40 21 and get arrested.

13:43:41 22 You could -- you know, there's -- there's

13:43:43 23 many different things that someone would say where

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13:43:45 1 you would keep someone on scene and detain them and
13:43:49 2 take it from there.

13:43:51 3 BY MR. DAVENPORT:

13:43:51 4 Q. Now, assuming that this person said
13:43:54 5 something about the scene that would have made them
13:43:57 6 a witness, did anybody take a statement from him
13:44:02 7 that day?

13:44:03 8 MS. HUGGINS: Form.

13:44:04 9 THE WITNESS: I never said that he was
13:44:05 10 a witness. I don't know if any statement was
13:44:09 11 taken. I would have deferred to the senior
13:44:11 12 officers.

13:44:11 13 BY MR. DAVENPORT:

13:44:11 14 Q. Okay. Now, would you agree that the
13:44:22 15 individual is now out of the scene and so is
13:44:25 16 Officer Karl Schultz at this point?

13:44:28 17 A. Yes.

13:44:28 18 Q. Okay. Where are you at this point?

13:44:29 19 A. I'm in the lower right-hand corner of
13:44:32 20 the video screen.

13:44:33 21 Q. And what direction are you facing?

13:44:36 22 A. East.

13:44:38 23 Q. And east would be in the -- you were

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13:44:40 1 facing the direction where that individual was,
13:44:44 2 correct?

13:44:45 3 A. The subject with Karl, yes.

13:44:48 4 Q. Okay. Do you know how -- approximately
13:44:53 5 how far away from the subject you were?

13:44:55 6 A. I -- I -- no, I don't.

13:44:57 7 Q. Okay. Now, at this point is Karl
13:45:05 8 Schultz leading the individual out -- back out into
13:45:07 9 the street?

13:45:09 10 A. Yes.

13:45:09 11 Q. Does it look like he's going out there
13:45:11 12 voluntarily, the individual?

13:45:13 13 A. No. It looks from -- from this camera,
13:45:16 14 he was being detained for some reason.

13:45:19 15 Q. Okay. Where were you at this time?

13:45:23 16 A. On the left side of Karl.

13:45:25 17 Q. Okay. Were you facing the individual?

13:45:28 18 A. Yeah. And -- yeah. Karl and the
13:45:30 19 individual, yeah.

13:45:31 20 Q. Okay. Now, where is the individual at
13:45:41 21 this time?

13:45:41 22 A. Lower right.

13:45:42 23 Q. Okay. Is any officer touching the

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13:45:47 1 individual?

13:45:48 2 A. Yes.

13:45:49 3 Q. And who is that individual?

13:45:50 4 A. Karl Schultz.

13:45:51 5 Q. And where are you at this time?

13:45:53 6 A. On the same side. The left side of

13:45:57 7 Karl Schultz.

13:45:57 8 Q. Okay. And are you facing the

13:45:59 9 individual?

13:46:00 10 A. Yes.

13:46:01 11 Q. Okay. Has any pat-down been done of

13:46:03 12 the individual at this point?

13:46:04 13 A. Not yet.

13:46:05 14 Q. Okay. Has any pat-down been done of

13:46:14 15 the individual at this point?

13:46:14 16 A. You can't really see, but I don't -- I

13:46:17 17 don't believe so.

13:46:18 18 Q. Well, you told me that the pat-down

13:46:21 19 would consist of patting down the pant legs,

13:46:23 20 correct?

13:46:23 21 A. Yeah.

13:46:23 22 Q. Has any -- does it look like Karl

13:46:25 23 Schultz has reached down at all, or does he still

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13:46:28 1 have his hands up, near the individual's head?

13:46:30 2 MS. HUGGINS: Form.

13:46:30 3 THE WITNESS: This camera view, it looks

13:46:32 4 like they're still up, upper body.

13:46:34 5 BY MR. DAVENPORT:

13:46:34 6 Q. Okay. Now, what just happened there?

13:46:40 7 A. A little bit of resistance.

13:46:45 8 Q. So when you say there was a little bit

13:46:47 9 of resistance, by who? The individual or the

13:46:49 10 police officer?

13:46:50 11 A. It looks like the subject, but that

13:46:54 12 doesn't always mean anything. It's an emotional

13:46:59 13 state. People sometimes act on emotion and kind of

13:47:06 14 pull away and push off a cop and then -- and then

13:47:10 15 they calm down.

13:47:13 16 Q. Now, where -- where are you at this

13:47:15 17 time? Can you be seen in the camera?

13:47:18 18 A. Can you start it over two seconds

13:47:20 19 before this so I can see exactly where I am?

13:47:23 20 Q. Sure. It might skip, so I might have

13:47:28 21 to go back again.

13:47:33 22 A. It looks like I'm on the right side.

13:47:36 23 Q. I'm sorry. I'm sorry. One second.

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13:47:40 1 A. Oh, sorry.

13:47:40 2 Q. Okay. All right. So we have it the
13:47:42 3 two seconds before my previous question, so now my
13:47:44 4 question is: From the time stamp 10:27:16, until
13:47:50 5 the time stamp 10:27:18, where we were previously
13:47:54 6 stopped, just kind of watch yourself, and tell me
13:47:57 7 where you're positioned at 10:27:18.

13:48:00 8 A. Okay.

13:48:01 9 Q. Or where -- you know, where you would
13:48:03 10 think that you are.

13:48:04 11 MS. HUGGINS: Form.

13:48:07 12 THE WITNESS: So I'm on the western side of
13:48:11 13 the subject that Karl made contact with, or he made
13:48:15 14 contact with Karl.

13:48:16 15 BY MR. DAVENPORT:

13:48:16 16 Q. Okay. So, now, when an individual
13:48:19 17 tries to struggle to get away from an officer or
13:48:22 18 there's some sort of resistance, did you receive
13:48:25 19 any training at that point on how to handle that
13:48:28 20 situation?

13:48:29 21 A. Yeah. There's like some -- they call
13:48:35 22 it verbal judo. You just kind of talk and
13:48:38 23 deescalate situations.

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13:48:40 1 Q. But verbal, not physical?

13:48:42 2 A. You can -- you can be physical to help
13:48:45 3 calm someone down, yeah, absolutely.

13:48:46 4 Q. Was that part of your training?

13:48:51 5 A. I don't remember if it was part of
13:48:53 6 academy or anything.

13:48:54 7 Q. Okay. At this point have you -- had
13:48:59 8 you encountered any individuals who had tried to
13:49:01 9 resist a police officer?

13:49:02 10 A. Yeah. Yeah. This morning, on the
13:49:04 11 Sattler call.

13:49:05 12 Q. Okay. And what sort of resistance did
13:49:09 13 you encounter in that situation?

13:49:12 14 A. Totally different scenario. Someone
13:49:15 15 that was running from police.

13:49:17 16 Q. And what -- what did you do in that
13:49:19 17 situation?

13:49:19 18 A. I ran after him.

13:49:21 19 Q. Okay. Did you actually catch the
13:49:24 20 individual --

13:49:24 21 A. I didn't.

13:49:25 22 Q. -- that was trying to run away?

13:49:26 23 A. I didn't.

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13:49:26 1 MS. HUGGINS: Form. Asked and answered.

13:49:28 2 THE WITNESS: I did not apprehend him, no.

13:49:30 3 BY MR. DAVENPORT:

13:49:30 4 Q. Were you involved at all in trying to
13:49:33 5 keep the individual from resisting?

13:49:37 6 A. The one from the Sattler call?

13:49:38 7 Q. Sattler.

13:49:39 8 A. No.

13:49:40 9 Q. Okay. So was that the only other time
13:49:42 10 that you had encountered somebody resisting being
13:49:46 11 detained by a police officer?

13:49:47 12 A. At that -- at that time I don't
13:49:49 13 remember any other incidents before -- before this
13:49:56 14 where someone had resisted. Very -- still very
13:50:01 15 new.

13:50:01 16 Q. Okay. Now, at this point we're at
13:50:08 17 10:27:21. It's three seconds after you had been on
13:50:11 18 the right side of the individual. Has there been
13:50:14 19 any pat-down that's been done of the subject?

13:50:18 20 A. It didn't -- didn't look -- look like
13:50:20 21 it so far, no.

13:50:21 22 Q. Okay.

13:50:34 23 A. So he's emptying out his own pockets

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13:50:37 1 right now.

13:50:37 2 Q. Okay. Why would he be emptying his
13:50:39 3 pockets?

13:50:41 4 A. Discretion. Maybe -- you know, I've
13:50:44 5 had people just empty out their pockets and pull up
13:50:47 6 their shirt to make sure they don't have anything
13:50:50 7 in their waistband.

13:50:51 8 I don't have to touch anybody if I don't
13:50:53 9 want to on a pat-down. They can pat themselves
13:50:55 10 down, and I can see inside their pockets -- well,
13:50:58 11 not see inside their pockets, but they can print
13:51:01 12 their pockets, fine.

13:51:03 13 Q. Okay.

13:51:03 14 A. You know, I don't need to -- I don't
13:51:04 15 need to do it myself.

13:51:06 16 And he was willing to and then spoke to us.

13:51:08 17 Q. If he was shaking his pockets, would
13:51:10 18 that count as a pat-down?

13:51:14 19 Would that be a proper pat-down?

13:51:16 20 MS. HUGGINS: Form.

13:51:18 21 THE WITNESS: I mean, if -- I guess if the
13:51:20 22 officer was satisfied with it.

13:51:23 23 BY MR. DAVENPORT:

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13:51:23 1 Q. So it would be officer discretion then?

13:51:25 2 A. Yeah.

13:51:28 3 Q. Now, at this point does it appear that
13:51:33 4 he's patting his pants or is he checking his coat?

13:51:38 5 A. It looks like he could have been doing
13:51:40 6 something with his coat. Maybe emptying out coat
13:51:42 7 pockets or something. I don't --

13:51:43 8 Q. Okay.

13:51:44 9 A. I don't know. Or I'm sorry. I don't
13:51:46 10 remember.

13:51:46 11 Q. It looks like he pulled something out
13:51:50 12 of his coat pocket. Do you know what that would
13:51:52 13 be?

13:51:52 14 A. I -- no. I don't remember.

13:51:53 15 Q. Okay. In this situation, what would
13:51:55 16 you expect him to pull out of his pockets?

13:51:57 17 MS. HUGGINS: Form.

13:51:58 18 THE WITNESS: I don't remember if anyone
13:52:01 19 asked him to go in his pockets or to get anything
13:52:06 20 out of his pockets.

13:52:07 21 BY MR. DAVENPORT:

13:52:07 22 Q. Okay.

13:52:10 23 A. Just because of the fact that I was so

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13:52:13 1 brand new, I don't know.

13:52:14 2 Q. Sure.

13:52:15 3 Would it be proper to ask this person for
13:52:18 4 an identification in this situation?

13:52:20 5 A. I mean, it -- it -- it falls back on
13:52:22 6 officer discretion. I think that if someone
13:52:27 7 said -- let's say in this example he did, and, of
13:52:30 8 course, I don't want to speculate -- if he was
13:52:31 9 like, that's my dad, then I can just ask someone
13:52:35 10 their name, and I could be okay with that, and then
13:52:39 11 other cops would still want to see an ID.

13:52:42 12 Q. Okay.

13:52:46 13 A. Or maybe what -- whatever he pulled out
13:52:48 14 of his pockets was an ID. I don't -- I don't know.

13:52:50 15 Q. Okay. Did he pat down his pants at all
13:52:52 16 during that exchange?

13:52:54 17 A. Yeah. There was a few seconds prior to
13:52:57 18 this that you showed where he was doing stuff with
13:53:00 19 his pants.

13:53:01 20 MR. DAVENPORT: Okay. We'll watch it again.

13:53:01 21 (Video clip played.)

13:53:01 22 BY MR. DAVENPORT:

13:53:19 23 Q. Did you notice him pat his pants at any

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13:53:21 1 point?

13:53:22 2 A. Yeah. You've just got to rewind it
13:53:25 3 further, because he did it on camera.

13:53:27 4 Q. Okay. So it would have been before the
13:53:28 5 point that I went back to?

13:53:31 6 THE WITNESS: Yeah.

13:53:31 7 (Video clip played.)

13:53:37 8 BY MR. DAVENPORT:

13:53:37 9 Q. Now, I just want you to focus on any
13:53:39 10 time that he patted his pants, and then I would ask
13:53:41 11 you to please tell me to stop.

13:53:42 12 MS. HUGGINS: Form.

13:53:43 13 THE WITNESS: So right there.

13:53:44 14 BY MR. DAVENPORT:

13:53:44 15 Q. He's patting his pants at that point?

13:53:45 16 A. Well, he's already on to his coat, but
13:53:49 17 it looked like he was patting his pants down real
13:53:51 18 quick.

13:53:54 19 Q. Did he pat his pants at any point
13:53:56 20 during that?

13:53:57 21 A. No. No. That was his coat.

13:54:16 22 Q. Okay. Now, during a pat-down, would
13:54:19 23 you expect somebody to reach down towards their

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13:54:21 1 ankles to show that they don't have a weapon in
13:54:23 2 their sock or shoe?

13:54:24 3 MS. HUGGINS: Form.

13:54:26 4 THE WITNESS: That's discretion.

13:54:27 5 BY MR. DAVENPORT:

13:54:28 6 Q. What would be proper for a pat-down?

13:54:29 7 MS. HUGGINS: Form.

13:54:29 8 THE WITNESS: Again, that's -- that's
13:54:32 9 discretion. I've -- I've given full pat-downs
13:54:35 10 before and -- and I went from their sleeves, all
13:54:39 11 the way down to their ankles, and then other times
13:54:42 12 I've had someone lift up their shirt to make sure
13:54:46 13 they didn't have a gun in their waistband and left
13:54:49 14 it as that.

13:54:49 15 BY MR. DAVENPORT:

13:54:49 16 Q. Okay.

13:54:50 17 A. So it all falls on discretion.

13:54:52 18 Q. Okay. How many times have you allowed
13:54:53 19 the individual to pat themselves down, as opposed
13:54:56 20 to you doing that pat-down?

13:54:57 21 MS. HUGGINS: Form.

13:54:57 22 THE WITNESS: I don't know specifics.

13:54:59 23 MR. DAVENPORT: I would ask also what's the

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13:55:01 1 form objection there?

13:55:02 2 MS. HUGGINS: How many times have you asked
13:55:03 3 a person to pat down themselves before you doing
13:55:06 4 it?

13:55:08 5 MR. DAVENPORT: I don't think that was the
13:55:09 6 question.

13:55:09 7 MS. HUGGINS: We can read back the question.

13:55:11 8 MR. DAVENPORT: Yes, please.

13:55:11 9 (The above-requested portion was then read
13:55:32 10 by the reporter.)

13:55:32 11 MS. HUGGINS: It's the use of the term
13:55:33 12 pat-down.

13:55:34 13 MR. DAVENPORT: Okay. You can answer.

13:55:34 14 THE WITNESS: Yeah, I wouldn't have
13:55:38 15 a specific number on that.

13:55:39 16 BY MR. DAVENPORT:

13:55:40 17 Q. But you have done that before?

13:55:43 18 A. Yeah.

13:55:44 19 Q. Okay. Now, at this point it appears
13:56:00 20 that you are no longer in the camera view and
13:56:02 21 Officer Schultz is no longer in the camera view,
13:56:05 22 but the individual's still standing in the street.
13:56:08 23 What would have been done -- what was being

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13:56:11 1 done at this point?

13:56:15 2 A. I don't remember. I would -- I would
13:56:17 3 defer to Karl on that.

13:56:18 4 Q. Okay. Why would you go back to the
13:56:21 5 police vehicle at that point?

13:56:23 6 A. I was probably following Karl around
13:56:25 7 and shadowing him.

13:56:34 8 Q. Okay.

13:56:42 9 A. So in the lower -- lower right.

13:56:53 10 Q. Now, at this point it appears that Karl
13:56:56 11 is radioing in. Would you agree to that?

13:56:58 12 A. Yes.

13:56:59 13 Q. Do you know what he was radioing in?

13:57:01 14 A. I don't. I don't remember.

13:57:02 15 Q. What would he possibly be radioing in
13:57:04 16 at that point?

13:57:05 17 MS. HUGGINS: Form.

13:57:09 18 THE WITNESS: I don't -- I actually don't
13:57:12 19 recall. I don't know -- I don't know. I mean,
13:57:16 20 I -- I did hear the -- the radio things over the
13:57:19 21 radio, but I didn't -- I don't know what he was
13:57:22 22 calling in right now.

13:57:30 23 BY MR. DAVENPORT:

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13:57:30 1 Q. Okay. Did you have access to a radio
13:57:35 2 at this point?

13:57:35 3 A. I did have access to a radio, yeah.

13:57:37 4 Q. Okay.

13:57:38 5 A. I didn't -- I didn't use it.

13:57:39 6 Q. What situations would you have used
13:57:43 7 that radio?

13:57:43 8 MS. HUGGINS: Form.

13:57:44 9 THE WITNESS: At -- at this point in time,
13:57:47 10 I probably -- and, again, I -- I don't remember in
13:57:55 11 total. I probably wasn't on the radio at all
13:57:57 12 because I was so brand new.

13:57:59 13 This -- this would have been Karl on the
13:58:01 14 radio, and I think I just started driving.

13:58:08 15 BY MR. DAVENPORT:

13:58:08 16 Q. Okay. Now, it appears at this point
13:58:39 17 that you're just walking around. Would there have
13:58:44 18 been anything that you would have had to do in this
13:58:48 19 situation?

13:58:48 20 Was -- were you receiving any directions
13:58:49 21 from any of the other officers?

13:58:51 22 A. I don't -- I don't think so.

13:58:53 23 Q. Okay. Why would that individual still

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13:59:01 1 be in the street at this point?

13:59:06 2 MS. HUGGINS: Form.

13:59:06 3 THE WITNESS: Honestly, I don't -- I don't
13:59:09 4 know. I'm sorry. I don't remember.

13:59:12 5 MR. DAVENPORT: Okay.

13:59:19 6 THE VIDEOGRAPHER: Mr. Davenport, for the
13:59:20 7 purposes of the media, could we take a quick
13:59:22 8 off-the-record break and --

13:59:22 9 MR. DAVENPORT: Yes, we can.

13:59:23 10 THE VIDEOGRAPHER: -- then start back up?

13:59:24 11 MR. DAVENPORT: Yes, we can.

13:59:28 12 THE VIDEOGRAPHER: Okay.

13:59:28 13 (A recess was then taken at 1:59 p.m.)

13:59:28 14 (On the record at 2:01 p.m.)

14:02:18 15 (Video clip played.)

14:02:18 16 BY MR. DAVENPORT:

14:02:19 17 Q. Now, at this point it's 10:25:48. The
14:02:21 18 police vehicle has just stopped, and it appears
14:02:24 19 that the person on the passenger side door has
14:02:27 20 opened the door. Would you agree with that?

14:02:29 21 A. Yeah. It -- it looks that way through
14:02:31 22 the trees.

14:02:32 23 Q. Okay. So now you -- it appears that

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14:02:37 1 you and Officer Schultz have exited the vehicle?

14:02:41 2 A. Yes.

14:02:43 3 Q. It --

14:02:44 4 A. I'm sorry.

14:02:44 5 Q. No. I'm sorry.

14:02:45 6 And the time is 10:25:51. I'm not asking

14:02:48 7 you to verify the accuracy of it, just whether you

14:02:52 8 see 10:25:51 on the screen.

14:02:54 9 A. Oh, yeah.

14:02:57 10 Q. Okay. Thank you.

14:03:10 11 Do you know what that car -- the beige car

14:03:37 12 or gray car that was there?

14:03:38 13 A. No.

14:03:39 14 Q. Okay. Now, the subject that we were

14:04:03 15 referring to before who was on his cell phone, does

14:04:07 16 he appear in the screen at 10:26:42?

14:04:11 17 A. Yes.

14:04:11 18 Q. Okay. Once again, not asking you to

14:04:13 19 verify the accuracy, just what time you see on the

14:04:16 20 screen.

14:04:23 21 So now at this point, do you see the subject

14:04:30 22 who was struck by the car walking back towards your

14:04:33 23 police vehicle?

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14:04:36 1 A. The subject, yeah, that threw himself
14:04:39 2 on the car and the officer's walking him back,
14:04:42 3 yeah.

14:04:44 4 Q. Now, when you say, threw himself at the
14:04:46 5 car, is that based on what you remember or based on
14:04:49 6 what you saw on the video?

14:04:50 7 A. No. That's based off what I remember
14:04:52 8 seeing.

14:04:53 9 Q. Okay. What about based off of what you
14:04:56 10 see in the video, what do you think?

14:04:57 11 MS. HUGGINS: Form.

14:04:58 12 THE WITNESS: Based on what I see in the
14:04:59 13 video, it's a different perspective than what I saw
14:05:02 14 in real life.

14:05:03 15 BY MR. DAVENPORT:

14:05:03 16 Q. Okay. Now, at 10:27:00, we see an
14:05:21 17 officer that's walking towards the sidewalk; is
14:05:23 18 that correct?

14:05:23 19 A. Yeah. Yes.

14:05:24 20 Q. Do you know who that officer was?

14:05:28 21 A. Karl Schultz.

14:05:29 22 Q. Okay. Now, at 10:27:04, we see the
14:05:39 23 individual. Is he facing Karl Schultz?

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14:05:43 1 A. In a bladed stance, yeah.

14:05:46 2 Q. What do you mean by a bladed stance?

14:05:48 3 A. It looks like his feet are facing
14:05:50 4 north, but his upper body is facing Karl, which is
14:05:53 5 west.

14:05:55 6 Q. Okay. I just want to rewind.

14:05:57 7 A. It looks like that.

14:05:59 8 Q. Okay. Okay. Now, immediately before
14:06:16 9 this 10:27 time stamp, did you see Karl Schultz
14:06:19 10 make any sort of gestures?

14:06:21 11 And I'll replay it.

14:06:23 12 A. Yeah. Can you go -- can you go back,
14:06:24 13 please?

14:06:24 14 Q. Yeah.

14:06:28 15 THE WITNESS: Thank you.

14:06:28 16 (Video clip played.)

14:06:41 17 THE WITNESS: He did something with his left
14:06:42 18 hand.

14:06:43 19 BY MR. DAVENPORT:

14:06:43 20 Q. Could you tell what that was?

14:06:46 21 A. Not -- not with this camera, no.

14:06:48 22 Q. Did it look like he was motioning for
14:06:50 23 someone to come towards him?

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14:06:54 1 A. Either that or he was gesturing
14:06:56 2 towards -- towards someone.

14:06:57 3 Q. Okay. Did he make that same gesture
14:07:01 4 again?

14:07:02 5 A. Yeah. Yes. I'm sorry.

14:07:10 6 Q. Okay. Now, at this point, where is the
14:07:14 7 subject's right hand?

14:07:16 8 MS. HUGGINS: Form.

14:07:16 9 THE WITNESS: Up by his face.

14:07:18 10 BY MR. DAVENPORT:

14:07:18 11 Q. Okay. Does it appear that it's on the
14:07:22 12 side of his face? In front of his face?

14:07:24 13 A. The side of his face.

14:07:26 14 Q. Okay. Why do you think his hand would
14:07:28 15 be on the side of his face?

14:07:29 16 MS. HUGGINS: Form.

14:07:31 17 THE WITNESS: As we discussed earlier, it
14:07:32 18 appeared as though he was on his phone.

14:07:34 19 BY MR. DAVENPORT:

14:07:34 20 Q. Okay. So now the individual's still on
14:07:38 21 his phone, correct?

14:07:40 22 A. Yes.

14:07:40 23 Q. And did the officer make contact --

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14:07:44 1 physical contact with the subject?

14:07:46 2 A. It -- you can't tell, but it looks as
14:07:51 3 though, with Karl's right arm, he might have made
14:07:55 4 contact with the left side of the subject's body.

14:07:57 5 Q. Okay. I'll just play it in one
14:08:00 6 continuous motion so that way hopefully you can see
14:08:03 7 that a little bit better.

14:08:04 8 MS. HUGGINS: Do you want to even go back
14:08:06 9 like one more second?

14:08:09 10 MR. DAVENPORT: Yeah.

14:08:10 11 MS. HUGGINS: I don't want it to skip.

14:08:10 12 (Video clip played.)

14:08:24 13 BY MR. DAVENPORT:

14:08:24 14 Q. So now did you see the subject also
14:08:26 15 raise his left arm?

14:08:27 16 A. I did.

14:08:28 17 Q. What did it look like he was doing?

14:08:31 18 A. I -- I -- I don't know what they
14:08:33 19 were -- I'm sorry -- I don't remember what they
14:08:35 20 were talking about, so I don't -- I don't know what
14:08:39 21 he was doing.

14:08:39 22 Q. Someone --

14:08:40 23 A. I just came around from the other side

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14:08:42 1 of the vehicle, as we just watched, so I don't know
14:08:44 2 what is taking place between the officer and the
14:08:49 3 subject.

14:08:49 4 Q. So, now, when somebody raises their
14:08:51 5 left hand, as the subject did, and then they start
14:08:55 6 walking away from the officer, what would that say
14:08:57 7 to you?

14:08:57 8 MS. HUGGINS: Form.

14:08:58 9 THE WITNESS: I -- it could mean a whole
14:09:00 10 bunch of things, and I don't know because, you
14:09:04 11 know -- and I can't even tell what I'm looking at,
14:09:07 12 you know, behind -- behind the tree.

14:09:08 13 Maybe I'm talking to, you know, Lauren.
14:09:10 14 Maybe I'm saying something to Lauren. Because I'm
14:09:13 15 still bladed south, so I -- I don't know exactly
14:09:16 16 what they were talking about, and I -- and I --
14:09:18 17 maybe I didn't even see him, you know, raise his
14:09:22 18 left hand, and maybe I didn't see Karl make the
14:09:24 19 motions with -- with his hands. I don't know
14:09:26 20 what's going on there.

14:09:27 21 BY MR. DAVENPORT:

14:09:27 22 Q. Sure. No. And I'm -- I'm sorry,
14:09:29 23 Officer Moriarity. I'm not talking about what you

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14:09:32 1 saw.

14:09:32 2 A. Okay.

14:09:32 3 Q. I'm just merely talking about what you
14:09:34 4 are seeing currently in the video. I understand
14:09:36 5 that on the day of the incident, you may have not
14:09:38 6 have seen every event that unfolded. I'm just
14:09:41 7 merely asking your opinion on what you just saw
14:09:43 8 between the subject and Officer Schultz.

14:09:44 9 MS. HUGGINS: Form.

14:09:44 10 THE WITNESS: Yeah, I mean, I -- I don't --
14:09:46 11 I don't know what that hand motion could have been.

14:09:49 12 BY MR. DAVENPORT:

14:09:49 13 Q. Okay. But he did raise out his left
14:09:52 14 arm and then walk away from Officer Schultz,
14:09:55 15 correct?

14:09:55 16 A. Yes, he definitely did do that.

14:09:57 17 Q. Okay. So, now, did you see that
14:10:01 18 contact was made between Officer Schultz and the
14:10:04 19 individual?

14:10:04 20 A. Yes, I did.

14:10:05 21 Q. Physical contact.

14:10:08 22 I'm sorry, Officer Moriarity.

14:10:08 23 A. Yes.

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14:10:09 1 Q. Physical contact?

14:10:10 2 A. Yeah. Yeah.

14:10:13 3 Q. Okay. Now, at this point,

14:10:14 4 Officer Schultz is bringing the individual

14:10:16 5 out, back towards the street, correct?

14:10:19 6 A. Yes.

14:10:19 7 Q. And where are you at that point?

14:10:21 8 A. Right in front of him.

14:10:22 9 Q. Right in front of him? Okay.

14:10:24 10 Are you facing the -- the subject?

14:10:25 11 A. I am.

14:10:26 12 Q. Okay. Now, at this point does it

14:10:32 13 appear that the individual still had his right arm

14:10:36 14 up near his face?

14:10:37 15 And I'll rewind it a little bit just so we

14:10:40 16 can see it again.

14:10:41 17 A. Correct, he does.

14:10:41 18 Q. Okay.

14:10:46 19 A. Excuse me.

14:10:56 20 Q. So now I just want you to pay attention

14:10:59 21 and see, did that individual ever take his right

14:11:01 22 arm away from the side of his face?

14:11:03 23 A. No.

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14:11:03 1 Q. Okay. And what would that lead you to
14:11:06 2 believe?

14:11:06 3 MS. HUGGINS: Form.

14:11:06 4 THE WITNESS: He -- he could still be on his
14:11:08 5 phone.

14:11:15 6 BY MR. DAVENPORT:

14:11:15 7 Q. Okay. Now, did you see Officer Schultz
14:11:17 8 grab something from the individual?

14:11:20 9 And I can replay it.

14:11:22 10 A. Yeah, could you, please? Thank you.

14:11:26 11 MR. DAVENPORT: Sure.

14:11:26 12 (Video clip played.)

14:11:26 13 BY MR. DAVENPORT:

14:11:44 14 Q. Did it appear that he grabbed something
14:11:46 15 out of the individual's right hand?

14:11:48 16 A. It looked that way.

14:11:50 17 Q. Okay. What do you think he grabbed?

14:11:52 18 A. He could have grabbed his phone.

14:11:54 19 MS. HUGGINS: Form.

14:11:55 20 BY MR. DAVENPORT:

14:11:56 21 Q. Where are you facing at that time?

14:11:57 22 A. It looks like I'm facing them.

14:11:59 23 Q. So you would assume that you probably

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14:12:00 1 saw that?

14:12:01 2 MS. HUGGINS: Form.

14:12:01 3 THE WITNESS: Yeah. I mean, I -- I -- yeah.

14:12:09 4 BY MR. DAVENPORT:

14:12:09 5 Q. Okay. So what did you just see right
14:12:11 6 there?

14:12:11 7 A. I don't know what I just -- I don't --
14:12:13 8 it looked like he pulled away and resisted whatever
14:12:19 9 Karl was doing.

14:12:22 10 Q. Did it look like it needed two officers
14:12:25 11 to keep that subject under control?

14:12:28 12 A. I would -- I would think so, yeah.

14:12:29 13 Q. Is that something that's typically done
14:12:32 14 is two officers --

14:12:33 15 A. Yes.

14:12:33 16 Q. -- to keep someone under control?

14:12:37 17 MS. HUGGINS: Form.

14:12:44 18 BY MR. DAVENPORT:

14:12:44 19 Q. Now, we talked about verbal cues before
14:12:46 20 as something that was part of your training. When
14:12:48 21 would it be appropriate to use verbal cues as
14:12:51 22 opposed to physical cues to subdue somebody who is
14:12:54 23 trying to resist detainment?

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14:12:56 1 A. It all depends on --

14:12:56 2 MS. HUGGINS: Form.

14:12:58 3 THE WITNESS: -- the actions of the person.

14:13:00 4 BY MR. DAVENPORT:

14:13:00 5 Q. What actions that you see in this video

14:13:02 6 would lead you to believe that physical methods

14:13:06 7 rather than verbal methods should have been used

14:13:08 8 for that individual?

14:13:09 9 A. Right now it's verbal, and then if you
14:13:13 10 press play, right now.

14:13:16 11 Q. And what -- what leads you to believe
14:13:18 12 that physical --

14:13:20 13 A. He did a pushing off or a jerking
14:13:23 14 motion from Karl when Karl was trying to talk to
14:13:26 15 him and continue whatever contact he was originally
14:13:31 16 trying to make with him in -- in -- in detainment.
14:13:36 17 In a form of detainment.

14:13:38 18 Q. Now, who pushed away first? Was it the
14:13:41 19 subject?

14:13:41 20 A. It appeared that way, yeah.

14:13:43 21 Q. Okay. We'll watch it again.

14:14:01 22 At what point --

14:14:02 23 A. Yeah.

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14:14:02 1 Q. -- did he --

14:14:02 2 A. Right --

14:14:04 3 Q. -- push --

14:14:04 4 A. Right --

14:14:04 5 Q. -- away?

14:14:04 6 A. Right before -- right before he turned

14:14:06 7 to face Karl, he pushed. He pushed away.

14:14:10 8 Q. Did he extend his arm?

14:14:11 9 A. You don't need to extend your arm. You

14:14:12 10 can keep your arm close to your body and -- and use

14:14:15 11 your legs to power away.

14:14:17 12 Q. So it wouldn't have necessarily been

14:14:19 13 a push with the arms. He was just trying to escape

14:14:21 14 the officer's grasp? Would that be a more fair

14:14:25 15 characterization?

14:14:26 16 MS. HUGGINS: Form.

14:14:26 17 THE WITNESS: I don't know if he was trying

14:14:27 18 to escape the officer's grasp. He was in an

14:14:32 19 emotional state, as per the video.

14:14:37 20 People -- people react in certain ways.

14:14:41 21 And after this, he was fine, from what the video

14:14:44 22 showed.

14:14:44 23 BY MR. DAVENPORT:

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14:14:44 1 Q. But I guess did he ever use his legs to
14:14:46 2 try to push away from the officer?

14:14:48 3 A. Play it again, please.

14:14:52 4 Q. Yeah.

14:14:53 5 I guess a couple of quick questions while
14:16:05 6 we're waiting for this to load up.

14:16:07 7 Do you receive an hourly wage, or are you
14:16:09 8 salaried?

14:16:10 9 A. Salaried.

14:16:11 10 Q. You're salaried?

14:16:13 11 A. Yeah.

14:16:13 12 Q. Okay. Do you have to hit a certain
14:16:16 13 number of hours to receive your salary for a week?

14:16:18 14 A. 40.

14:16:19 15 Q. Okay. Do you receive any overtime
14:16:22 16 beyond what your salary is?

14:16:24 17 A. If I choose to take it, yeah.

14:16:25 18 Q. Okay. And how is your overtime rate
14:16:28 19 determined?

14:16:29 20 A. Time and a half.

14:16:31 21 Q. Time and -- so how do you determine
14:16:34 22 what time and a half is if you're not paid hourly?

14:16:38 23 MS. HUGGINS: Form.

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14:16:38 1 THE WITNESS: Yeah. That's broken down by
14:16:45 2 payroll. I mean, yeah, there -- there's an hourly
14:16:47 3 rate, but I make -- I made -- at the time, I think
14:16:51 4 it was forty-three seven.

14:16:55 5 BY MR. DAVENPORT:

14:16:55 6 Q. Okay. So were you salaried at that
14:16:57 7 time as well?

14:16:58 8 A. Yeah.

14:16:59 9 Q. Okay. Are all officers salaried
14:17:01 10 workers or are some of them hourly?

14:17:03 11 A. No. It's all salary.

14:17:04 12 Q. It is all salary? Okay.

14:17:07 13 So, now, just so that way we can go back to
14:17:16 14 what we were trying to look at before, I just want
14:17:19 15 you to focus on whether the subject ever extends
14:17:22 16 his arm or uses his legs in any sort of fashion
14:17:24 17 that would lead you to believe that he's trying to
14:17:27 18 push away from Officer Karl Schultz.

14:17:28 19 MS. HUGGINS: If it's possible, can you go
14:17:30 20 back one more second?

14:17:31 21 MR. DAVENPORT: Yeah, I'll try.

14:17:34 22 MS. HUGGINS: I know it's not cooperating,
14:17:37 23 but --

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14:17:37 1 (Video clip played.)

14:17:51 2 MS. HUGGINS: Okay. Thank you.

14:17:57 3 THE WITNESS: So, yeah, with his left leg,
14:18:01 4 he kind of made a -- a sudden -- a sudden I would
14:18:04 5 say minorly chaotic movement to face Karl, and Karl
14:18:11 6 completed the motion to spin him around and kind of
14:18:15 7 get him under control real quick.

14:18:18 8 BY MR. DAVENPORT:

14:18:18 9 Q. So what's -- I guess in your terms,
14:18:21 10 what a minor chaotic move is?

14:18:23 11 A. Just moving -- moving real quick in --
14:18:25 12 in front of officers when a number 1 concern for
14:18:29 13 everyone -- everyone involved in a scene --
14:18:33 14 subjects, officers, defendants, victims -- moving
14:18:38 15 real quick can mean someone's, you know, got
14:18:41 16 a knife that passed maybe a -- a pat-down or -- or
14:18:44 17 they're going to punch someone or something.

14:18:47 18 So, yeah, a chaotic movement. I know I did
14:18:51 19 a pat-down. I've been punched in the face before
14:18:54 20 because I was too close to someone because they
14:18:57 21 made a chaotic movement. It's -- it's normal. It
14:19:00 22 happens.

14:19:00 23 Q. Sure. But the only minor chaotic move

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14:19:03 1 that you have seen at that point was something that
14:19:05 2 he did with his left leg to face towards Karl
14:19:08 3 Schultz?

14:19:08 4 A. Yeah. In a not normal way to face
14:19:11 5 someone. It looks from the video, and, again,
14:19:14 6 it's -- it's from a -- a viewpoint that's not on
14:19:17 7 street level, it looks -- it looked a little
14:19:23 8 chaotic, and it looks like not a normal turning,
14:19:25 9 facing movement.

14:19:26 10 Q. All right. I just want to watch it one
14:19:28 11 more time --

14:19:28 12 A. Sure.

14:19:28 13 Q. -- just to make sure that there was
14:19:30 14 nothing else besides that left leg movement that
14:19:32 15 you noticed.

14:19:32 16 MS. HUGGINS: Form.

14:21:50 17 (Discussion off the record.)

14:21:50 18 MR. DAVENPORT: So we're just watching one
14:21:52 19 more time to make sure there was nothing besides
14:21:55 20 that left leg movement that you saw.

14:21:56 21 MS. HUGGINS: From his view of the video?

14:21:58 22 MR. DAVENPORT: Correct.

14:21:58 23 (Video clip played.)

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14:21:58 1 BY MR. DAVENPORT:

14:22:05 2 Q. So did you notice anything else?

14:22:07 3 I can replay it if you would like me to.

14:22:09 4 A. No. No. I mean, yeah, the -- the

14:22:11 5 left leg movement, and then if -- if you want to

14:22:15 6 continue pressing play, once -- once he was under

14:22:19 7 control, for lack of better terms, from whatever

14:22:26 8 this was, he was fine.

14:22:28 9 MR. DAVENPORT: Okay. So I want you to

14:22:35 10 watch again.

14:22:35 11 (Video clip played.)

14:22:36 12 THE WITNESS: There's your pat-down.

14:22:38 13 BY MR. DAVENPORT:

14:22:38 14 Q. Okay. Now, why would Karl Schultz be

14:23:03 15 going back to the vehicle at that point?

14:23:04 16 MS. HUGGINS: Form.

14:23:04 17 THE WITNESS: I -- I don't remember what he

14:23:06 18 went back to the vehicle for.

14:23:08 19 BY MR. DAVENPORT:

14:23:08 20 Q. Is it possible that he took his ID?

14:23:11 21 MS. HUGGINS: Form.

14:23:11 22 THE WITNESS: It's a possibility. I would

14:23:13 23 defer to -- to Karl.

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14:23:14 1 BY MR. DAVENPORT:

14:23:14 2 Q. Okay. For what reasons would somebody
14:23:17 3 take their ID in this situation?

14:23:21 4 MS. HUGGINS: Form.

14:23:21 5 THE WITNESS: Now that he's made contact
14:23:27 6 with him or he made contact with Karl, you can
14:23:31 7 check someone's ID and find out who they are and,
14:23:35 8 you know, you can search for whatever reason
14:23:40 9 you're -- you're looking at him for.

14:23:43 10 You can find out if he's got warrants. I'm
14:23:45 11 not saying it was ever a thing that we thought he
14:23:50 12 did have. I don't know why he -- I'm sorry. I
14:23:53 13 don't remember why he ran his ID, if he's even
14:23:58 14 running his ID.

14:24:00 15 BY MR. DAVENPORT:

14:24:00 16 Q. Okay. Do you recall what was said to
14:24:23 17 the subject at this point?

14:24:25 18 A. I don't remember, no.

14:24:26 19 Q. Do you see that Karl Schultz is now
14:24:29 20 radioing in?

14:24:30 21 A. Yes.

14:24:30 22 Q. What reason would he be radioing in at
14:24:33 23 that point?

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14:24:33 1 MS. HUGGINS: Form.

14:24:35 2 THE WITNESS: There's -- there's a radio
14:24:38 3 log. I mean, whatever -- whatever he said
14:24:40 4 immediately goes on a radio log. I don't know --
14:24:43 5 I don't remember what he said over the radio.

14:24:45 6 BY MR. DAVENPORT:

14:24:46 7 Q. Let's say he had checked that person's
14:24:48 8 ID, what things would he have to call into dispatch?

14:24:52 9 A. He doesn't have to call anything in if
14:24:56 10 he doesn't want to call anything in about -- about
14:24:58 11 an ID check. He could have just checked the ID --
14:25:03 12 if he did check an ID, he could have checked it
14:25:05 13 over the computer.

14:25:06 14 Q. Would it be required for that
14:25:07 15 individual, that subject to stand there and wait
14:25:10 16 for his ID to be checked?

14:25:12 17 MS. HUGGINS: Form.

14:25:12 18 THE WITNESS: If -- if Karl was detaining
14:25:15 19 him, then -- then, yeah, I mean, he's not under
14:25:24 20 arrest. He didn't -- he's free to leave, though,
14:25:24 21 too, so --

14:25:27 22 BY MR. DAVENPORT:

14:25:27 23 Q. But if you're detained, are you allowed

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14:25:30 1 to leave?

14:25:30 2 MS. HUGGINS: Form.

14:25:31 3 THE WITNESS: Yeah, when everything's done.

14:25:32 4 BY MR. DAVENPORT:

14:25:32 5 Q. But he's not -- he's not allowed to

14:25:34 6 leave at this point, correct?

14:25:35 7 MS. HUGGINS: Form.

14:25:37 8 THE WITNESS: I would still defer to -- to

14:25:40 9 Karl.

14:25:41 10 BY MR. DAVENPORT:

14:25:42 11 Q. At any point did anybody hand him back

14:25:43 12 that cell phone that was taken earlier?

14:25:45 13 MS. HUGGINS: Form.

14:25:46 14 THE WITNESS: I am -- I don't remember if he

14:25:49 15 snatched a cell phone from him or not. I don't

14:25:51 16 know what that motion was in front of his face.

14:25:55 17 BY MR. DAVENPORT:

14:25:55 18 Q. But whatever --

14:25:56 19 A. So --

14:25:58 20 Q. -- was taken from him, did anybody ever

14:26:02 21 hand back whatever was taken from him initially?

14:26:02 22 MS. HUGGINS: Form.

14:26:05 23 THE WITNESS: I can't honestly say

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14:26:06 1 I remember if anything was taken yet.

14:26:07 2 BY MR. DAVENPORT:

14:26:07 3 Q. Okay. But no -- nothing in the
14:26:09 4 video -- well, would that be the first time, at
14:26:11 5 10:30:08, that something was handed back to the
14:26:16 6 individual?

14:26:16 7 A. I don't know about handed back to the
14:26:17 8 individual. I know that I handed him something
14:26:20 9 right there.

14:26:21 10 Q. Okay. We'll just go back a little bit.
14:26:24 11 I just want to make sure that nothing was handed to
14:26:27 12 the individual before then.

14:26:39 13 I want to go back to the moment it looked
14:26:40 14 like something may have been taken from him.

14:27:29 15 Now, I just want you to watch and see. Are
14:27:31 16 officers handing anything to him at this point?

14:27:33 17 MS. HUGGINS: Form.

14:27:39 18 BY MR. DAVENPORT:

14:27:39 19 Q. Has anything been handed to him at this
14:27:41 20 point?

14:27:41 21 A. No, not yet.

14:27:42 22 Q. Okay. At 10:28:24, has anything been
14:28:11 23 handed to the subject at that point?

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14:28:12 1 A. No, not yet.

14:28:44 2 Q. Okay. At 10:29, has anything been
14:28:46 3 handed back to the individual?

14:28:48 4 A. No.

14:29:20 5 Q. Okay. 10:29:35, had anything been
14:29:23 6 handed to the individual?

14:29:24 7 A. No.

14:29:51 8 Q. Now, at 10:30:06, is that the first
14:29:55 9 time anything had been handed to the individual?

14:29:57 10 MS. HUGGINS: Form.

14:29:57 11 THE WITNESS: Yeah, it looks that way, yeah.

14:29:59 12 MR. DAVENPORT: Thank you.

14:30:04 13 We are now going to Exhibit 11.

14:30:45 14 Now I'm showing what has been marked Exhibit
14:30:47 15 11. The last four digits are 5233.

14:31:59 16 (Video clip played.)

14:31:59 17 BY MR. DAVENPORT:

14:31:59 18 Q. Now, what's the time at that upper --
14:32:01 19 upper section? What -- what does it read?

14:32:03 20 I'm not asking you to verify the accuracy.
14:32:06 21 Just what does it read?

14:32:07 22 A. The time on the video is 10:52:36.

14:32:11 23 Q. Okay. So you guys -- what -- what's

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14:32:15 1 depicted in the video currently right now is the
14:32:19 2 five officers -- there's now five officers standing
14:32:23 3 in a circle -- circular kind of --

14:32:26 4 A. Correct.

14:32:26 5 Q. -- formation?

14:32:28 6 What was going on here?

14:32:31 7 A. I don't -- I don't remember what we all
14:32:34 8 were talking about. I -- I can tell you that I was
14:32:38 9 probably just standing there watching them all,
14:32:41 10 but --

14:32:41 11 Q. Do you remember what types of things
14:32:43 12 were being said?

14:32:44 13 A. No. No, I don't.

14:32:46 14 Q. Do you remember approximately what time
14:32:48 15 that fifth police officer arrived at the scene?

14:32:52 16 A. I don't.

14:32:52 17 Q. Like, you know, roughly, let's use as
14:32:55 18 a reference point the time that the collision was
14:32:58 19 made.

14:32:59 20 What time -- or how much time elapsed before
14:33:04 21 that fifth police officer arrived at the scene?

14:33:05 22 MS. HUGGINS: Form.

14:33:06 23 THE WITNESS: I don't -- I don't remember.

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14:33:06 1 BY MR. DAVENPORT:

14:33:07 2 Q. Okay. Do you remember anything
14:33:08 3 appreciable happening in between the time of the
14:33:12 4 end of that third video segment and this fourth
14:33:16 5 video segment, where we see a fifth police officer
14:33:18 6 arriving at the scene?

14:33:19 7 MS. HUGGINS: Form.

14:33:21 8 THE WITNESS: I don't -- no, I don't --

14:33:21 9 BY MR. DAVENPORT:

14:33:21 10 Q. Okay.

14:33:23 11 A. I don't think there was anything.
14:33:25 12 Yeah, I don't -- I don't think there was -- there
14:33:26 13 was anything.

14:33:27 14 Q. Okay. Do you see the individual
14:33:30 15 standing by the red van?

14:33:33 16 A. Yeah. Yes.

14:33:35 17 Q. Now, what initially did you arrive at
14:33:40 18 the scene for for this individual standing near the
14:33:44 19 red van?

14:33:44 20 MS. HUGGINS: Form. Asked and answered.

14:33:46 21 THE WITNESS: Yeah. I -- I went to
14:33:48 22 33 Schmarbeck for a larceny. I don't know if
14:33:52 23 that's the same -- same complainant. I don't know

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14:33:54 1 if that's the same person.

14:33:56 2 BY MR. DAVENPORT:

14:33:56 3 Q. Okay. Is that individual holding
14:33:58 4 something in his hand?

14:34:01 5 A. Yeah. It looks like something.

14:34:02 6 Q. What do you -- what does it look like?

14:34:04 7 A. Something blue.

14:34:05 8 Q. Okay. Does it look like a bag?

14:34:08 9 A. It could be a bag, yeah. I don't know.

14:34:14 10 Q. Okay. So, now, going back towards the
14:34:21 11 beginning, you know that you have an individual,
14:34:26 12 who there was a collision with a -- with a police
14:34:30 13 vehicle, that's sitting in the back of your police
14:34:33 14 vehicle, correct?

14:34:33 15 MS. HUGGINS: Form.

14:34:33 16 THE WITNESS: Yes.

14:34:34 17 BY MR. DAVENPORT:

14:34:36 18 Q. Had any other assessments been done to
14:34:38 19 assess his physical condition at this point?

14:34:42 20 A. Not by -- not by me. I don't know if
14:34:45 21 other officers did.

14:34:46 22 Q. Okay. So, now, the time is 10:52:33,
14:34:53 23 and there's five police officers that are standing

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14:34:56 1 in a circle, correct?

14:34:58 2 A. Yes.

14:34:58 3 MS. HUGGINS: Form.

14:34:58 4 MR. DAVENPORT: Okay. So we're just going to
14:35:02 5 watch through, and we're going to see what time --
14:35:04 6 at what time the officers broke at that point for
14:35:08 7 their police vehicles.

14:35:08 8 (Video clip played.)

14:35:08 9 BY MR. DAVENPORT:

14:35:29 10 Q. What kinds of discussions would have
14:35:30 11 been had by the police officers at this time?

14:35:32 12 MS. HUGGINS: Form.

14:35:33 13 THE WITNESS: There could have been many
14:35:37 14 discussions. Maybe about what took place on
14:35:39 15 Sattler. It's New Year's Day. They could have
14:35:42 16 been talking about what was taking place on
14:35:44 17 New Year's Eve.

14:35:47 18 It could have been anything. I know at one
14:35:50 19 point in time someone called Lieutenant McHugh.

14:35:52 20 BY MR. DAVENPORT:

14:35:52 21 Q. Was it at this time that that call was
14:35:54 22 made?

14:35:55 23 A. I -- I don't remember. I remember -- I

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14:35:57 1 remember that someone did contact him.

14:36:00 2 Q. Okay. Okay. Were you there present
14:36:02 3 for that conversation with Lieutenant McHugh?

14:36:04 4 A. I don't -- I don't think so. I don't
14:36:08 5 think so, but I wouldn't -- I wouldn't remember if
14:36:15 6 I was.

14:36:15 7 Q. Have you ever used your cell phone to
14:36:17 8 contact a lieutenant before?

14:36:18 9 A. Yeah.

14:36:19 10 Q. Okay. How often do you do that?

14:36:20 11 A. It depends on the lieutenant. Some
14:36:21 12 like it over the phone, some like it over the
14:36:24 13 radio.

14:36:24 14 Q. Okay.

14:36:24 15 A. Some -- yeah.

14:36:25 16 Q. But, I mean, roughly, how many times
14:36:27 17 have you had to do that?

14:36:28 18 MS. HUGGINS: Form.

14:36:29 19 THE WITNESS: Tons.

14:36:31 20 BY MR. DAVENPORT:

14:36:31 21 Q. Okay. Would you -- Lieutenant McHugh
14:36:35 22 was your lieutenant at the time at C District --

14:36:37 23 A. At the time, yeah.

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14:36:39 1 Q. -- correct?

14:36:40 2 Did Lieutenant McHugh prefer that officers
14:36:44 3 contact him by phone?

14:36:45 4 A. He was probably indifferent.

14:36:46 5 Q. Okay. Did you ever contact Lieutenant
14:36:46 6 McHugh --

14:36:46 7 A. No.

14:36:49 8 Q. -- by phone?

14:36:50 9 A. Karl would do that. He's the FTO.

14:36:52 10 Q. Okay. After your 16 weeks of training
14:36:54 11 were over with Karl Schultz, did you ever contact
14:36:56 12 Lieutenant McHugh?

14:36:57 13 A. No.

14:36:57 14 Q. You would have had a different
14:36:59 15 lieutenant at the time?

14:37:00 16 A. Yeah, I had a different lieutenant.

14:37:01 17 Q. Do you remember who that lieutenant
14:37:02 18 was?

14:37:03 19 A. Yes.

14:37:03 20 Q. Who was your lieutenant?

14:37:05 21 A. Lieutenant Long and Lieutenant Nigrelli.

14:37:08 22 Q. Okay. Did you ever use your phone to
14:37:10 23 contact either of those two lieutenants?

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14:37:11 1 A. For sure, yeah.

14:37:12 2 Q. Okay. About how often did you contact
14:37:14 3 those two lieutenants?

14:37:15 4 A. Job related, not often.

14:37:18 5 Q. Okay. So it would have been more so
14:37:20 6 nonjob-related instances?

14:37:21 7 A. Yeah. Yeah.

14:37:21 8 Q. Okay. How many times have you contacted
14:37:24 9 a lieutenant for a job-related situation?

14:37:28 10 A. A lieutenant in general, and when
14:37:32 11 I say tons, maybe 20 -- 20 or so.

14:37:39 12 Q. Okay. And what --

14:37:40 13 A. Over the course of years.

14:37:41 14 Q. What types of situations would lead
14:37:42 15 you to use your phone rather than radio to contact
14:37:45 16 a lieutenant?

14:37:45 17 A. Like I said, some lieutenants just
14:37:47 18 don't want to be contacted over the radio, so --

14:37:51 19 Q. Is there a specific lieutenant that
14:37:53 20 you're thinking of that doesn't want to be
14:37:55 21 contacted by radio?

14:37:56 22 A. No.

14:37:57 23 Q. So it wasn't a lieutenant that --

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14:38:02 1 A. But some -- some don't, so --

14:38:03 2 Q. But no lieutenants that you ever worked
14:38:05 3 with that don't like to be contacted by radio?

14:38:07 4 A. None that I've worked --

14:38:09 5 MS. HUGGINS: Form.

14:38:11 6 THE WITNESS: None that I've worked for
14:38:12 7 directly, but there are other lieutenants that
14:38:14 8 work around you that don't like to be contacted by
14:38:16 9 radio.

14:38:16 10 (Video clip played.)

14:38:16 11 BY MR. DAVENPORT:

14:38:16 12 Q. Okay. Did you see that motion that was
14:38:44 13 just made right there?

14:38:45 14 A. I did.

14:38:46 15 Q. What do you think that was in reference
14:38:48 16 to?

14:38:48 17 MS. HUGGINS: Form.

14:38:49 18 THE WITNESS: That would be speculation,
14:38:54 19 and, again, I -- I don't remember. I'm taking it
14:38:58 20 all in like the first week or two that I was even
14:39:01 21 on.

14:39:02 22 BY MR. DAVENPORT:

14:39:02 23 Q. Sure.

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14:39:02 1 A. So I'm standing there. I don't even
14:39:04 2 know what's going on.

14:39:05 3 Q. But it looked like he took himself and
14:39:09 4 kind of thrust his legs out and his midsection,
14:39:14 5 correct?

14:39:15 6 A. Yeah.

14:39:16 7 Q. Do you know which officer that was?

14:39:18 8 A. I don't.

14:39:18 9 Q. Okay. Can you tell from this video who
14:39:21 10 that officer is?

14:39:23 11 A. No, not really.

14:39:24 12 Q. Okay. Now, at this time, was there
14:39:43 13 another officer who was in that Dodge Charger in
14:39:49 14 the back?

14:39:50 15 MS. HUGGINS: Form.

14:39:50 16 THE WITNESS: There -- I wouldn't even
14:39:52 17 remember.

14:39:52 18 BY MR. DAVENPORT:

14:39:52 19 Q. Okay. So it was double-up that --
14:39:55 20 double-up day --

14:39:56 21 A. Double-up day, yes.

14:39:58 22 Q. -- that day, correct?

14:39:59 23 How often does double-up day occur?

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14:40:00 1 A. Twice a month.

14:40:01 2 Q. Okay. Now, when there's double-up day,
14:40:05 3 are there ever any police vehicles for C District
14:40:08 4 that are left over that are not being used by any
14:40:11 5 of the officers?

14:40:11 6 A. Sometimes.

14:40:12 7 Q. Sometimes? Okay.

14:40:14 8 Would it be typical for an officer, on
14:40:16 9 double-up day, to drive by themselves, without
14:40:19 10 another officer present?

14:40:21 11 A. Yes.

14:40:21 12 Q. That has happened before?

14:40:23 13 A. Yes.

14:40:23 14 Q. Okay. Okay.

14:40:35 15 So now at this time, you still know that
14:40:37 16 there's an individual in your car who was on the
14:40:39 17 ground after colliding -- a collision with
14:40:42 18 a vehicle, correct?

14:40:43 19 A. Yes.

14:40:43 20 MS. HUGGINS: Form.

14:40:44 21 BY MR. DAVENPORT:

14:40:44 22 Q. Okay. And nobody's doing any sort of
14:40:47 23 a physical assessment of him at this time.

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14:40:50 1 A. I would defer to the senior officers
14:40:52 2 that had already done their physical assessment
14:40:57 3 with their years of experience.

14:40:59 4 Q. But one of the things that we talked
14:41:00 5 about before was you would be able to know if
14:41:04 6 somebody had some sort of internal bleeding if
14:41:06 7 maybe they had gone pale --

14:41:08 8 A. Right.

14:41:08 9 Q. -- or you noticed some other
14:41:10 10 circumstances, but nobody's checking for that at
14:41:12 11 this point.

14:41:12 12 A. No. At 10:54:25 is when they all split
14:41:17 13 up.

14:41:18 14 Q. Okay.

14:41:18 15 A. We all split up.

14:41:19 16 Q. Okay. Where were you guys going next
14:41:21 17 at this point?

14:41:24 18 A. I don't -- excuse me.

14:41:29 19 It was E -- ECMC. I don't remember how that
14:41:32 20 was all determined, though.

14:41:34 21 Q. Okay. Have you ever been involved, as
14:41:40 22 either a driver or a passenger, in any sort of
14:41:43 23 motor vehicle collision --

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14:41:43 1 A. No.

14:41:43 2 Q. -- with a police vehicle?

14:41:45 3 A. No.

14:41:45 4 Q. Okay. Do you know what the proper

14:41:47 5 procedure is if a police vehicle is involved in

14:41:50 6 some sort of a motor -- motor vehicle collision?

14:41:53 7 A. In a motor vehicle accident between two

14:41:58 8 vehicles, you would call a lieutenant and accident

14:42:03 9 investigation unit.

14:42:04 10 Q. What about if that police vehicle

14:42:07 11 struck an individual? What would be the --

14:42:10 12 A. If --

14:42:11 13 Q. -- proper procedure?

14:42:12 14 A. If the police vehicle struck

14:42:14 15 a pedestrian, it would be the same thing. You

14:42:18 16 would call a lieutenant and accident investigation

14:42:22 17 unit.

14:42:23 18 If -- in this case, which I think the other

14:42:28 19 officers made the call to contact the lieutenant --

14:42:32 20 or our -- our lieutenant, it was determined by them

14:42:37 21 that it was not a motor vehicle accident and a

14:42:42 22 penal law issue. There was an arrest made.

14:42:46 23 Q. So if it's a penal law issue, some sort

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14:42:49 1 of a crime, the accident investigation unit does
14:42:51 2 not need to arrive --

14:42:52 3 A. No.

14:42:52 4 Q. -- at the scene?

14:42:53 5 Now, if the accident investigation unit
14:42:56 6 arrives at the scene, do you know if statements are
14:42:58 7 supposed to be take -- taken by witnesses?

14:43:00 8 A. Accident investigation unit would do
14:43:02 9 that.

14:43:02 10 Q. Do you know if the accident
14:43:03 11 investigation unit would need to investigate or
14:43:06 12 take a statement from the individual that was
14:43:08 13 struck by the police vehicle?

14:43:10 14 A. In -- in an accident, yeah, they
14:43:15 15 take -- they take the statement.

14:43:16 16 Q. Of the individual that's been struck?

14:43:18 17 A. Of the individual, yeah.

14:43:19 18 Q. Okay. And they would also need to take
14:43:21 19 statements from anybody who possibly witnessed?

14:43:23 20 A. Yes.

14:43:24 21 Q. Okay. Now, as part of accident
14:43:36 22 investigation unit's investigation, are they taking
14:43:38 23 photographs of the vehicle? The scene? Is that

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14:43:40 1 part of what they --

14:43:40 2 A. I'm --

14:43:41 3 Q. -- do?

14:43:42 4 A. I'm not in that -- that unit. I wouldn't

14:43:44 5 know what determines whether or not they take

14:43:47 6 pictures or don't take pictures of -- I wouldn't --

14:43:50 7 I wouldn't know.

14:43:50 8 Q. Let me ask you, I guess, a different

14:43:53 9 question.

14:43:53 10 Have you ever been involved with somebody

14:43:55 11 damaging a police vehicle intentionally?

14:43:58 12 A. This would be -- this would be one of

14:44:04 13 them, and then there was another time where someone

14:44:08 14 was in the back seat, kicking out a window.

14:44:10 15 Q. Okay. Now --

14:44:10 16 A. And, again, that was not my vehicle.

14:44:15 17 Q. The person whose vehicle it was, do you

14:44:18 18 recall who was driving that vehicle?

14:44:20 19 A. No.

14:44:20 20 Q. Okay. Do you remember if they took

14:44:21 21 a photograph of the window?

14:44:24 22 A. No.

14:44:25 23 Q. Do you recall if --

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14:44:26 1 A. I didn't -- I didn't help with that
14:44:28 2 arrest.

14:44:28 3 Q. Do you recall if anybody took
14:44:29 4 a photograph of the vehicle, the window that was
14:44:32 5 kicked out?

14:44:33 6 A. No.

14:44:34 7 Q. No, they didn't take one, or no, you
14:44:38 8 don't recall?

14:44:38 9 A. No, I don't -- I don't recall.

14:44:38 10 Q. Okay.

14:44:42 11 A. Sorry.

14:44:42 12 Q. Now, in this case, what does it appear
14:44:46 13 that that officer is doing?

14:44:48 14 MS. HUGGINS: Well, to be fair, there's
14:44:50 15 three people in the screen.

14:44:51 16 MR. DAVENPORT: I'll go back.

14:44:58 17 Now, there's an individual who was walking
14:45:00 18 away from the driver's side vehicle --

14:45:00 19 THE WITNESS: Right.

14:45:00 20 BY MR. DAVENPORT:

14:45:02 21 Q. -- of the Chevy Tahoe that is currently
14:45:04 22 in view of the camera, correct?

14:45:06 23 A. Right. Yes.

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14:45:06 1 Q. And that individual is now standing in
14:45:08 2 the center of the street -- in the center of the
14:45:12 3 street?

14:45:13 4 A. Mm-hmm. Yes. I'm sorry.

14:45:14 5 Q. Okay. What direction is she now
14:45:18 6 facing?

14:45:18 7 A. South.

14:45:19 8 Q. South, towards the police vehicle?

14:45:20 9 A. Yes.

14:45:21 10 Q. Okay. Why do you think that she would
14:45:23 11 have walked away from the police vehicle and then
14:45:27 12 faced in the direction of the police vehicle after
14:45:29 13 walking up to the driver's side door?

14:45:31 14 MS. HUGGINS: Form.

14:45:32 15 THE WITNESS: So I can't -- I can't speak on
14:45:33 16 her behalf. I'm already at my vehicle off screen.
14:45:37 17 I don't know -- I don't know if I'm in the truck
14:45:40 18 yet, or I don't know -- I don't know what she's
14:45:40 19 doing.

14:45:43 20 BY MR. DAVENPORT:

14:45:43 21 Q. So I guess --

14:45:44 22 A. I mean, you -- you can't even really
14:45:47 23 see what's in front of her because it's -- it's

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14:45:49 1 pretty pixilated or -- or blurry or whatever you
14:45:51 2 want to call it, but I -- I don't know.

14:45:54 3 Q. Okay. Now --

14:45:57 4 A. You know, you can't even really see
14:45:59 5 what she -- if she's -- you can't see what she's
14:46:02 6 doing.

14:46:02 7 Q. Is she standing in front of the police
14:46:04 8 vehicle?

14:46:04 9 A. She's definitely standing in front of
14:46:06 10 the police vehicle, yeah, but --

14:46:06 11 Q. And she's standing stationary?

14:46:08 12 A. Yeah.

14:46:08 13 Q. Okay. Now she's walking towards the
14:46:14 14 police vehicle, correct?

14:46:15 15 A. Correct.

14:46:16 16 Q. Okay. Were you ever shown any pictures
14:46:21 17 or photographs of the police vehicle in question
14:46:24 18 that day?

14:46:25 19 A. No.

14:46:25 20 Q. Okay. Do you know if anybody was shown
14:46:28 21 any pictures of the police vehicle that day?

14:46:30 22 A. No, I don't know.

14:46:33 23 Q. Are you familiar with the penal law

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14:46:35 1 statute for criminal mischief in the third degree,
14:46:38 2 which is a felony?

14:46:40 3 A. Yeah, I'm familiar with it. I would
14:46:42 4 have to have it in front of me to recite it.

14:46:44 5 Q. Sure.

14:46:45 6 Do you recall if there's a threshold in
14:46:46 7 damage that's required in order to meet the burden
14:46:50 8 of proving that criminal statute?

14:46:53 9 MS. HUGGINS: Form.

14:46:53 10 THE WITNESS: I would have to have it in
14:46:55 11 front of me to -- to recite it.

14:46:57 12 MR. DAVENPORT: Okay. Can we point the
14:47:02 13 camera back at the witness?

14:47:05 14 THE VIDEOGRAPHER: Sure.

14:47:05 15 MR. DAVENPORT: Thank you.

14:47:06 16 And then we can turn on the lights too.
14:47:09 17 Thank you.

14:47:41 18 Okay. So I'm going to show you what's been
14:47:42 19 marked as Exhibit 4A. I only have a copy of
14:47:48 20 Exhibit 4.

14:47:51 21 MS. HUGGINS: That's okay. I know what it
14:47:55 22 is. Why don't you keep this as your original.
14:47:57 23 I believe I have 4A.

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14:47:58 1 MR. DAVENPORT: Okay.

14:48:02 2 So, now, after you've left the scene at
14:48:04 3 Schmarbeck, you went to ECMC; is that correct?

14:48:04 4 THE WITNESS: Yes.

14:48:07 5 BY MR. DAVENPORT:

14:48:07 6 Q. Okay. Were you having any discussions
14:48:10 7 with Karl Schultz at that time?

14:48:12 8 A. I don't -- I don't remember. We
14:48:15 9 probably were, yeah.

14:48:16 10 Q. Okay. Do you remember any discussions
14:48:19 11 about a 941 procedure?

14:48:21 12 A. No, I -- I don't. And I -- even at the
14:48:23 13 time, I wouldn't have had a clue what it was.

14:48:25 14 Q. Okay. That wasn't any training that
14:48:27 15 you had received beforehand?

14:48:28 16 A. It -- you know, it -- it -- it was. It
14:48:31 17 was very, very quick training in academy, but --

14:48:36 18 Q. Which academy? Was it the Buffalo --

14:48:38 19 A. This was -- this was the police
14:48:39 20 academy, not Buffalo academy.

14:48:41 21 Q. Okay. Okay. So when you arrived at
14:48:46 22 ECMC, do you remember approximately how long you
14:48:48 23 stayed there?

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14:48:49 1 A. I -- no, I don't. I don't remember.

14:48:52 2 Q. Okay. At any point during your shift,
14:48:54 3 did you have anything to eat? Lunch or anything
14:48:56 4 like that?

14:48:58 5 A. Yeah. I don't remember what time or
14:48:59 6 what I ate or nothing, though.

14:49:00 7 Q. Do you remember what you had to eat
14:49:01 8 that day?

14:49:02 9 A. No.

14:49:02 10 Q. Okay. Do you remember if you ate at
14:49:05 11 the hospital?

14:49:05 12 A. I definitely didn't eat there. I don't
14:49:07 13 eat there.

14:49:07 14 Q. Okay. And when you say you definitely
14:49:10 15 don't eat there --

14:49:11 16 A. Yeah.

14:49:11 17 Q. -- what reason is that?

14:49:12 18 A. I just don't. I just don't eat at
14:49:15 19 hospitals, Tim Hortons. I just don't do it.

14:49:19 20 Q. Okay. So more so the food, not like --

14:49:20 21 A. Yeah.

14:49:20 22 Q. -- germs or anything like that?

14:49:22 23 A. Oh, no. No, no, no.

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14:49:24 1 Q. Okay. Okay. So do you see on -- now,
14:49:33 2 do you see at 11:22:34, there's a location change
14:49:38 3 for C230 to ECMC?

14:49:40 4 A. Yes.

14:49:40 5 Q. Okay. And C230, on the day of the
14:49:45 6 incident, that was your call sign, correct?

14:49:47 7 A. That was -- yeah, that was mine and
14:49:49 8 Karl's, yeah.

14:49:49 9 Q. Okay. So, now, when it says location
14:49:51 10 changed, is that somebody radioing in to say where
14:49:56 11 you are located at that point, or is there some
14:49:57 12 sort of a tracker on your car?

14:49:59 13 A. No. That would be someone calling in
14:50:01 14 over the radio saying we're going to ECMC.

14:50:04 15 Q. Okay. Did Karl Schultz make that call?

14:50:06 16 A. We would have to look -- listen to
14:50:09 17 the --

14:50:09 18 Q. Okay.

14:50:09 19 A. -- to the radio, yeah.

14:50:10 20 Q. Okay. So, now, do you see at 11:23:01,
14:50:18 21 C230 will be a 941? Do you see that entry?

14:50:21 22 A. Yes.

14:50:22 23 Q. Is there any way to enter that

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14:50:23 1 manually, or would that have to be something that's
14:50:26 2 over the radio?

14:50:26 3 A. So it looks like it was entered in over
14:50:30 4 the radio because the numbers before that, 000478,
14:50:38 5 is going to be one of these other -- other
14:50:41 6 personnel, not the officers. And I don't know
14:50:45 7 why --

14:50:45 8 Q. Okay.

14:50:46 9 A. That's -- that's dispatch, the -- the
14:50:48 10 Sal Polizzi. Salvatore Polizzi.

14:50:51 11 Q. Yep.

14:50:51 12 A. That would be like one of -- one of
14:50:53 13 them or something.

14:50:54 14 Q. Okay. So now we have on scene C230.

14:51:01 15 Would that still be referring to ECMC?

14:51:03 16 A. That would be referring to -- to ECMC.
14:51:06 17 So now we're on scene at ECMC at 11:30.

14:51:11 18 Q. Okay. And then there's a call in at
14:51:13 19 11:30:35, C230, suspect broke mirror on car 473
14:51:19 20 intentionally.

14:51:19 21 Would that be something that's radioed in,
14:51:21 22 or would that be something that is entered by the
14:51:24 23 police officer?

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14:51:24 1 A. So that would be radioed in because of
14:51:26 2 who -- whoever entered it in had, you know, the --
14:51:28 3 their work ID number is 000478.

14:51:31 4 Q. Okay. Is there ever any time that
14:51:34 5 there's an entry made for somebody that would have
14:51:37 6 had an officer radio something in, but really it
14:51:41 7 was the officer that manually entered it in?

14:51:43 8 A. It would be --

14:51:43 9 MS. HUGGINS: Form.

14:51:44 10 THE WITNESS: It would be -- so like in
14:51:47 11 front of Karl Schultz, the numbers 169325, that
14:51:51 12 would be where the 000470 would be.

14:51:55 13 BY MR. DAVENPORT:

14:51:55 14 Q. Okay. Now, we have at -- let's see
14:52:00 15 here.

14:52:01 16 Let's go back to the previous exhibit.
14:52:17 17 I think it's Exhibit 7 for you.

14:52:35 18 So now we have an entry at 11:22 that says,
14:52:38 19 location change to ECMC, which matches up with
14:52:42 20 what's on the complaint summary report.

14:52:44 21 Do you see that between Exhibit 7 and
14:52:46 22 Exhibit 4A?

14:52:48 23 A. Yeah. 11:22, location change, and then

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14:52:51 1 over here, 11:22, location change.

14:52:54 2 Q. Okay. And then we have an entry at
14:52:56 3 11:30 saying that you are on scene. That's on
14:52:58 4 Exhibit 7. And that would still be referring to
14:53:02 5 you being on scene at ECMC, correct?

14:53:05 6 A. Wait a minute.

14:53:06 7 Q. For Exhibit 7, there's a time 11:30 a.m.

14:53:10 8 A. Oh, yeah. Yeah.

14:53:12 9 Q. Okay.

14:53:13 10 A. Yep, 11:30 a.m.

14:53:16 11 Q. Now, at the point that it says, on your
14:53:19 12 dispatch monitor -- so that would be Exhibit 7 --
14:53:24 13 1314, that would be in reference to 1:14 p.m.,
14:53:24 14 correct?

14:53:24 15 A. Yes.

14:53:27 16 Q. And it says available?

14:53:28 17 A. I'm available now. I'm available --

14:53:28 18 Q. Okay.

14:53:30 19 A. -- to take a call.

14:53:31 20 Q. Okay. So would you have made your
14:53:33 21 availability as you were leaving ECMC?

14:53:35 22 A. I don't -- I don't remember when I made
14:53:37 23 myself available. I'm pretty sure Karl's going to

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14:53:41 1 be the one that made us available, not me.

14:53:44 2 Q. Sure.

14:53:44 3 A. And you can do it at ECMC. You can do
14:53:47 4 it anywhere driving around. The stationhouse. You
14:53:50 5 can do it -- you can do it whenever.

14:53:51 6 Q. Okay.

14:53:53 7 A. So yeah.

14:53:54 8 Q. Okay. So we wouldn't necessarily know
14:53:57 9 if he made himself available at ECMC or if he made
14:53:59 10 himself available at the stationhouse?

14:54:02 11 A. Or -- or like I said, or -- or
14:54:04 12 anywhere.

14:54:04 13 Q. Okay.

14:54:05 14 A. But no, I wouldn't -- I wouldn't be
14:54:06 15 able to remember that -- that.

14:54:08 16 Q. Okay. So the next time, according to
14:54:12 17 your dispatch monitor, it looks like you were
14:54:17 18 dispatched at 1:14 p.m.?

14:54:19 19 A. Yeah, 1:14.

14:54:20 20 Q. For a traffic stop?

14:54:22 21 A. Yes.

14:54:23 22 Q. Okay. Is there any reason why you
14:54:27 23 would have made yourself available at the same

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14:54:29 1 time that you were responding to an incident for
14:54:33 2 a traffic stop?

14:54:35 3 Is that -- is that something that you ever
14:54:36 4 do?

14:54:36 5 A. So, yeah, you can -- you can be on --
14:54:41 6 you can -- you can be on a call, like the
14:54:45 7 accident/injury at Schmarbeck, and then you can
14:54:47 8 call back in service on something else, and then
14:54:51 9 they just put you back in as available, and then
14:54:53 10 immediately put you on whatever you're either
14:54:56 11 calling out on -- or no matter what, dispatch is
14:54:59 12 going to say you're available first and then, boom,
14:55:02 13 you're at a call.

14:55:02 14 Q. Okay.

14:55:04 15 A. So even if -- even if I'm not
14:55:07 16 initiating the traffic stop, let's say -- let's say
14:55:09 17 it was the criminal mischief instead of the traffic
14:55:12 18 stop, it's still going to say, you know, available,
14:55:14 19 boom, criminal mischief, you know?

14:55:16 20 Q. Mm-hmm.

14:55:18 21 So on the day of the accident, did you ever
14:55:21 22 investigate or get a visual of what the mirror was?

14:55:25 23 A. I didn't. I didn't look at the truck

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14:55:27 1 at all.

14:55:27 2 Q. Okay.

14:55:27 3 A. Not that I -- not that I remember, but,

14:55:31 4 you know.

14:55:31 5 Q. Okay. Do you know if it was broken or

14:55:34 6 not?

14:55:35 7 A. I don't even know if I looked.

14:55:38 8 Q. Okay. Okay. Did you hear any of the

14:55:44 9 other officers talking about any difficulties with

14:55:46 10 using the driver's side mirror?

14:55:49 11 A. No.

14:55:50 12 Q. Okay.

14:55:51 13 A. No.

14:55:51 14 Q. And that was on the day of the

14:55:53 15 incident, you didn't hear anybody talking about

14:55:55 16 any difficulties with the driver's side mirror?

14:55:57 17 A. If -- maybe if it was said at ECMC, but

14:56:01 18 I don't remember. I was out in the hallway the

14:56:03 19 whole time.

14:56:04 20 Q. Okay. Driver's side window. Also you

14:56:06 21 didn't hear anybody say that they had any

14:56:08 22 difficulties with that?

14:56:09 23 A. No, not that I remember.

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14:56:12 1 Q. Okay. Did you ever go into the room
14:56:13 2 where Mr. Kistner was --

14:56:14 3 A. I did not.

14:56:15 4 Q. -- at that time?

14:56:16 5 Okay. Did you have any discussions with any
14:56:19 6 of the hospital staff while you were there?

14:56:21 7 A. My mouth was shut the entire time I was
14:56:23 8 at ECMC.

14:56:23 9 Q. Okay. Was that a direction that was
14:56:26 10 given to you?

14:56:26 11 A. No. That was just me knowing my place
14:56:30 12 as someone brand new.

14:56:31 13 Q. Okay. Was that ever something that was
14:56:34 14 told to you by Karl Schultz, that as a new person,
14:56:38 15 you shouldn't say anything unless directed to say
14:56:41 16 something?

14:56:41 17 A. No. No. That was just something
14:56:43 18 I felt wasn't appropriate at the time.

14:56:45 19 MR. DAVENPORT: Okay. I'm going to show you
14:56:48 20 something that's been marked as Exhibit 16.

14:56:51 21 And I'm sorry that I don't have --

14:56:51 22 MS. HUGGINS: I have --

14:56:51 23 MR. DAVENPORT: -- another one.

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14:56:52 1 MS. HUGGINS: I have one. Thank you.

14:56:53 2 MR. DAVENPORT: Okay. Okay.

14:56:55 3 So, now, directing your attention to shift
14:57:00 4 2nd, do you know what that's referring to?

14:57:03 5 THE WITNESS: Day shift.

14:57:03 6 BY MR. DAVENPORT:

14:57:03 7 Q. Okay. So day shift would be considered
14:57:07 8 the second shift?

14:57:08 9 A. Yes.

14:57:10 10 Q. Was there different designations that
14:57:12 11 were used for officers working one day as opposed
14:57:16 12 to another?

14:57:17 13 Like, did you guys ever -- excuse me.
14:57:19 14 Strike that.

14:57:20 15 Did you ever reference to platoons for
14:57:23 16 people on day shift?

14:57:27 17 A. Some -- some people do. Like this
14:57:31 18 would be McHugh's platoon.

14:57:34 19 Q. Okay.

14:57:34 20 A. You know.

14:57:36 21 I -- I don't make references like that,
14:57:38 22 though.

14:57:38 23 Q. Okay. What -- what do you use for your

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14:57:40 1 reference?

14:57:40 2 A. I just say day shift.

14:57:41 3 Q. Okay. Now, looking at this list, who
14:57:47 4 was the officer that had the most experience at
14:57:51 5 that time?

14:57:53 6 MS. HUGGINS: Form.

14:57:55 7 THE WITNESS: Yeah, I mean, some of -- some
14:58:01 8 of these guys, like Ronnie Daniels, and I don't
14:58:03 9 know who William Johnson is. Clarence Sampson,
14:58:07 10 he's been retired. So those guys.

14:58:12 11 BY MR. DAVENPORT:

14:58:12 12 Q. Okay. Looking over this list, were
14:58:16 13 these all the officers who typically worked
14:58:18 14 C District at that time?

14:58:23 15 A. Some of them, like, like I said,
14:58:25 16 Clarence and Ronnie Daniels, those guys were not on
14:58:28 17 my platoon. I don't think Kevin Quinn was on --
14:58:35 18 was there.

14:58:37 19 I don't know who Erin is. Erin Heidinger.
14:58:42 20 I don't know who that is.

14:58:42 21 Q. So is it possible that they were people
14:58:45 22 who were working the other platoon for day shift?

14:58:49 23 A. That -- yeah, that could be.

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14:58:52 1 Q. Okay. After police officers complete
14:58:57 2 the academy, where are they typically sent to if
14:59:01 3 they're working in the City of Buffalo?

14:59:02 4 Is there a certain district that they're
14:59:04 5 normally sent to?

14:59:04 6 A. No. They're sent to one of the five.

14:59:06 7 Q. Did you choose, at that time, to be in
14:59:08 8 the C District, as opposed to the other districts?

14:59:11 9 A. You don't get to choose.

14:59:12 10 Q. Okay.

14:59:12 11 A. As -- as far as the FTO, field
14:59:15 12 training, no, you don't get to choose.

14:59:17 13 Q. Okay. How would you classify
14:59:19 14 C District, as opposed to the other districts?

14:59:23 15 MS. HUGGINS: Form.

14:59:23 16 THE WITNESS: Can you explain that question?

14:59:25 17 BY MR. DAVENPORT:

14:59:25 18 Q. What's the crime rate in C District,
14:59:27 19 as opposed to the other districts in the City of
14:59:35 20 Buffalo?

14:59:35 21 A. I mean, different crimes vary in
14:59:39 22 different areas.

14:59:40 23 C District has a lot of -- a lot of

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14:59:41 1 violence. E district has a lot of violence. But
14:59:45 2 then so do all the other ones.

14:59:47 3 Maybe certain neighborhoods -- neighborhoods
14:59:49 4 have more car thefts, like Hertel, you know,
14:59:55 5 North Buffalo has a lot of car thefts. Bravo's got
15:00:00 6 a lot of car thefts. You know, I mean, it -- it --
15:00:04 7 it varies.

15:00:04 8 Q. Okay. But, I guess, going back to what
15:00:07 9 you were saying before, does C District have more
15:00:09 10 violent crimes, as opposed to --

15:00:10 11 A. I would --

15:00:11 12 Q. -- other districts?

15:00:12 13 A. I would say so, yeah, as of C and E.

15:00:16 14 Q. And you're currently in Bravo District
15:00:18 15 now.

15:00:18 16 A. I'm in Bravo.

15:00:19 17 Q. Okay. Is that because you didn't want
15:00:21 18 to have to deal with the more violent crimes?

15:00:23 19 A. No. No.

15:00:24 20 Q. Not really something that phases you
15:00:26 21 then?

15:00:26 22 A. No. That -- it -- yeah, that doesn't
15:00:29 23 phase me, but it's nice to see Christmas lights

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15:00:31 1 sometimes, so it's good to see something different.

15:00:34 2 **MR. DAVENPORT:** So I'm going to show you

15:00:36 3 something that's been marked as Exhibit 17.

15:00:38 4 And, again, I apologize. I don't have

15:00:40 5 another copy of Exhibit 17.

15:00:42 6 It's the complaint -- the criminal

15:00:45 7 complaint.

15:00:45 8 **MS. HUGGINS:** I have all the exhibits except

15:00:47 9 for the first day. No copies were provided from

15:00:49 10 the first day.

15:00:51 11 **MR. DAVENPORT:** Okay.

15:00:51 12 **MS. HUGGINS:** And I also -- just in general,

15:00:53 13 cover pages with the exhibit tabs can be sent to me

15:00:58 14 at some point.

15:00:59 15 **MR. DAVENPORT:** Okay.

15:01:01 16 Now, reading after what's in the middle

15:01:05 17 listed as criminal mischief in the third degree?

15:01:09 18 **THE WITNESS:** Mm-hmm. Yes.

15:01:10 19 **BY MR. DAVENPORT:**

15:01:10 20 **Q.** Okay. Now, I know -- I understand that

15:01:13 21 you didn't sign this, but in terms of the

15:01:16 22 accusations that are made in this criminal

15:01:19 23 document, I just want to see if you agree with what

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15:01:21 1 was written.

15:01:23 2 So for the first sentence it says, in that
15:01:26 3 the defendant, while at 37 Schmarbeck, did with
15:01:30 4 intent to damage.

15:01:31 5 Now, would you agree that the subject
15:01:35 6 intended to damage the police vehicle?

15:01:36 7 MS. HUGGINS: Form.

15:01:40 8 THE WITNESS: Look -- I'm -- I'm looking
15:01:42 9 through a -- a driver's side mirror, so, I mean,
15:01:44 10 I don't have the -- the view of the person driving
15:01:47 11 the vehicle, so I'm not going to be the one that
15:01:53 12 says with intent or -- or -- or whatnot.

15:01:56 13 I mean, that's why Lauren signed off on the
15:01:59 14 charges, not me.

15:02:00 15 BY MR. DAVENPORT:

15:02:00 16 Q. What about based off of what you saw in
15:02:02 17 the video? Would you say that the subject intended
15:02:04 18 to damage the vehicle?

15:02:04 19 A. I can't --

15:02:04 20 MS. HUGGINS: Form.

15:02:05 21 THE WITNESS: -- because that's not --
15:02:06 22 that's not the view that I had. I had a view from
15:02:09 23 my driver's side mirror, and -- and through my

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15:02:11 1 driver's side mirror, I would say yes.

15:02:13 2 BY MR. DAVENPORT:

15:02:13 3 Q. That the subject did intend to damage
15:02:15 4 the vehicle?

15:02:15 5 A. From my driver's side mirror, yeah.

15:02:17 6 Q. Okay. What about the view that you saw
15:02:19 7 on the TV screen?

15:02:21 8 A. I -- I mean, I'm -- I'm not -- I -- I'm
15:02:23 9 not going to say that because I didn't -- that's
15:02:25 10 not the viewpoint that I had. I mean, I'm looking
15:02:31 11 through my -- my driver's side mirror. That's what
15:02:34 12 I'm looking through.

15:02:35 13 Q. Sure, but I guess just what I'm asking
15:02:37 14 is: After watching that video, do you think that
15:02:39 15 the subject intended to damage the vehicle?

15:02:41 16 MS. HUGGINS: Form.

15:02:42 17 THE WITNESS: The way that he walked up to
15:02:44 18 a moving vehicle, and then it looks like the
15:02:47 19 vehicle was stopping or stopped, and then all of
15:02:51 20 a sudden he falls down, yeah, I would say -- I
15:02:53 21 would say, yeah, it does look like he intended
15:02:56 22 to -- to throw himself into the vehicle, so --

15:02:59 23 BY MR. DAVENPORT:

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15:02:59 1 Q. But we talked about before, when we
15:03:01 2 were watching the -- when we were watching the
15:03:03 3 video, the car seemed to still be moving after
15:03:06 4 contact was made, correct?

15:03:07 5 MS. HUGGINS: Form.

15:03:07 6 THE WITNESS: From -- from wherever this
15:03:09 7 viewpoint was, I mean, it -- it can look like all
15:03:12 8 types of stuff, but what -- what did -- what did
15:03:14 9 the officers on the ground view?

15:03:17 10 You know, Lauren is the best person to ask
15:03:19 11 this question to. I didn't -- I wasn't right here,
15:03:23 12 you know, I --

15:03:23 13 BY MR. DAVENPORT:

15:03:23 14 Q. Right. No. I -- I understand.

15:03:24 15 A. I'm way up the street, you know?

15:03:26 16 Q. And, you know, she signed this under
15:03:28 17 the penalties of perjury --

15:03:28 18 A. Yeah.

15:03:30 19 Q. -- so it's -- you know, this is more so
15:03:31 20 what she said, but I'm just merely asking if you
15:03:33 21 agree with what was written.

15:03:34 22 A. I -- I do agree with what --

15:03:36 23 MS. HUGGINS: Form.

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15:03:37 1 THE WITNESS: -- was -- what was written.

15:03:37 2 BY MR. DAVENPORT:

15:03:37 3 Q. So after what you saw on the video, he
15:03:39 4 intended to damage the vehicle?

15:03:40 5 MS. HUGGINS: Form. Asked and answered.

15:03:41 6 THE WITNESS: Yeah.

15:03:42 7 BY MR. DAVENPORT:

15:03:42 8 Q. Okay. So going towards the next line:

15:03:45 9 The property of another person, City of Buffalo
15:03:48 10 Police Department, and having no right to do so,
15:03:51 11 nor any reasonable ground to believe that he had
15:03:54 12 such right, did damage the property, to wit,
15:03:58 13 driver's side mirror and driver's side mirror of
15:04:01 14 patrol vehicle, in the amount of more than \$250.

15:04:04 15 Now, my question is: At any point during
15:04:07 16 that day, was there ever a second opinion that was
15:04:11 17 received, besides the officers on scene, for what
15:04:13 18 the damage to the police vehicle was at that time?

15:04:16 19 A. I would have absolutely no idea if --
15:04:19 20 if anyone else looked at -- looked at it.

15:04:23 21 I wouldn't even know who to -- who to ask
15:04:26 22 that to.

15:04:27 23 Q. Okay.

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15:04:27 1 A. Maybe the -- I know -- I mean, did they
15:04:29 2 take it to the Seneca garage? I don't know
15:04:32 3 these -- I don't know those answers.

15:04:33 4 Q. Okay.

15:04:33 5 A. I don't know what they did with -- with
15:04:36 6 anything.

15:04:37 7 Q. So I'm going to show you what's been
15:04:39 8 marked as Exhibit 18.

15:04:42 9 A. What is this?

15:04:45 10 Q. Can you read the date that's right
15:04:48 11 underneath service information?

15:04:53 12 A. Oh, the one that's circled? 1/5/2017.

15:04:57 13 Q. Okay. So, now, it's been represented
15:04:58 14 to us by your counsel that this is the first
15:05:02 15 maintenance work order after that incident, so --

15:05:06 16 A. Okay.

15:05:06 17 MS. HUGGINS: Form.

15:05:08 18 BY MR. DAVENPORT:

15:05:10 19 Q. Do you see anything that's on there
15:05:12 20 where it refers to fixing or repairing a driver's
15:05:19 21 side window or driver's side mirror?

15:05:21 22 A. No.

15:05:21 23 Q. Okay. Was does it refer to?

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15:05:24 1 A. It says service cooling system. And
15:05:26 2 then remarks -- I don't know what RR means, but
15:05:29 3 water pump and then serp belt. Maybe serpentine
15:05:36 4 belt.

15:05:36 5 Q. Okay. And would you agree that there's
15:05:38 6 no estimate as to what the cost will be for
15:05:42 7 repairing the vehicle?

15:05:43 8 MS. HUGGINS: Form.

15:05:44 9 THE WITNESS: Yeah. It's blank.

15:05:45 10 BY MR. DAVENPORT:

15:05:45 11 Q. Okay. And you would also agree with me
15:05:48 12 that it in no way refers to the driver's side
15:05:51 13 mirror or the driver's side window.

15:05:52 14 A. Correct.

15:05:53 15 Q. Okay. So now turning back to Exhibit 17,
15:06:00 16 would you agree that it was speculation that the
15:06:03 17 amount of the damage was more than \$250?

15:06:06 18 MS. HUGGINS: Form.

15:06:06 19 THE WITNESS: That would be speculation,
15:06:11 20 I've got to defer to Lauren. I don't -- she --
15:06:14 21 again, you know, she signed off on the charges, so
15:06:16 22 I -- I don't know.

15:06:17 23 BY MR. DAVENPORT:

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15:06:17 1 Q. Okay.

15:06:18 2 A. I'm not a mechanic either. I don't
15:06:20 3 know how much a mirror costs.

15:06:21 4 Q. Sure.

15:06:21 5 All right. So next sentence: In that the
15:06:24 6 defendant did intentionally throw his body into the
15:06:27 7 driver's side mirror of patrol vehicle number 473,
15:06:31 8 causing the mirror to become dislodged from the
15:06:34 9 vehicle.

15:06:34 10 Now, on that day, did you observe the
15:06:36 11 driver's side mirror becoming dislodged from the
15:06:39 12 vehicle?

15:06:40 13 MS. HUGGINS: Form.

15:06:40 14 THE WITNESS: I don't even think I looked at
15:06:43 15 the truck.

15:06:43 16 BY MR. DAVENPORT:

15:06:43 17 Q. Okay. And also causing the driver's
15:06:47 18 side window to malfunction. The value of said
15:06:49 19 damage to exceed \$250.

15:06:53 20 Now, did anybody at any point talk about the
15:06:58 21 driver's side mirror or the driver's side window
15:07:01 22 being either dislodged or malfunctioning on the
15:07:03 23 day?

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15:07:05 1 A. It --

15:07:05 2 MS. HUGGINS: Form.

15:07:06 3 THE WITNESS: If -- if they -- they did,
15:07:09 4 they didn't say it to me, because why would you
15:07:11 5 talk to me? I'm brand new. If they said it in
15:07:15 6 front of me, then I don't -- I don't remember,
15:07:17 7 because I probably wasn't either -- I don't know.
15:07:20 8 I wasn't paying attention or I just didn't
15:07:22 9 remember.

15:07:27 10 BY MR. DAVENPORT:

15:07:28 11 Q. All right. So we'll turn to the next
15:07:30 12 criminal complaint, which is for disorderly
15:07:33 13 conduct.

15:07:33 14 So now it says, the said defendant, at the
15:07:37 15 aforesaid time and place, with intent to cause
15:07:40 16 public inconvenience, annoyance, or alarm, or
15:07:43 17 recklessly creating a risk thereof, while in
15:07:46 18 a public place, did use abusive or obscene language
15:07:51 19 or made an obscene gesture.

15:07:54 20 Now, at any time that you were with
15:07:57 21 Mr. Kistner, did he ever make an obscene gesture to
15:08:00 22 any of the officers?

15:08:01 23 A. I mean, even -- even on the video, it

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15:08:05 1 just shows us taking off. I -- I didn't have any
15:08:11 2 confrontation with him, with the exception of
15:08:13 3 walking him back to patrol vehicle 532 and placing
15:08:18 4 him in the back, and then -- and then that was it.

15:08:22 5 Q. Now, when you say a confrontation, what
15:08:24 6 are you referring to?

15:08:24 7 A. Just -- just me in contact with him,
15:08:28 8 bringing him back to the patrol vehicle. That --
15:08:32 9 that was it. That's the confrontation.

15:08:34 10 Q. Okay. Did he ever make any sort of
15:08:36 11 rude remarks or use any obscene language directed
15:08:40 12 towards you or Mr. Schultz?

15:08:42 13 A. Not to me. Not from what I remember.

15:08:45 14 Q. Okay. What about to Mr. Schultz?

15:08:49 15 A. Not to -- not to what I remember.

15:08:50 16 Q. Okay. Now, in that the defendant did
15:08:56 17 intentionally throw his body into the driver's side
15:08:59 18 mirror of patrol vehicle number 473, causing the
15:09:02 19 mirror to become dislodged from the vehicle and
15:09:04 20 also causing the driver's side window to
15:09:06 21 malfunction, the value of said damage to exceed
15:09:10 22 \$250.

15:09:11 23 Now, do you know if for disorderly conduct,

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15:09:14 1 is there some sort of a threshold amount of damage
15:09:17 2 that's recovered -- required in order to charge
15:09:19 3 somebody with that penal law statute?

15:09:21 4 MS. HUGGINS: Form.

15:09:21 5 THE WITNESS: No, there's not.

15:09:23 6 BY MR. DAVENPORT:

15:09:23 7 Q. Okay. And while being treated at ECMC,
15:09:27 8 the defendant did use obscene and offensive
15:09:30 9 language toward officers and medical staff.

15:09:33 10 Do you remember the individual, Mr. Kistner,
15:09:38 11 ever using obscene language towards the medical
15:09:40 12 staff there?

15:09:41 13 A. I wasn't in the room with him.

15:09:43 14 Q. Okay. Now, have you ever used
15:09:53 15 a strip search or a body cavity search before,
15:09:57 16 after somebody's been taken to cell block or
15:10:01 17 booking?

15:10:01 18 A. No.

15:10:01 19 Q. Never before?

15:10:02 20 A. No. Cell block does their formal
15:10:05 21 searches, but no.

15:10:06 22 Q. Have you ever directed a cell block
15:10:08 23 attendant to use a body cavity or a strip search?

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15:10:11 1 A. I don't have the authority to do that.

15:10:13 2 Q. Okay. Are you aware of any
15:10:14 3 strip searches or body cavity searches that
15:10:17 4 were done by cell block attendants from someone
15:10:20 5 that you arrested?

15:10:21 6 MS. HUGGINS: Form.

15:10:21 7 THE WITNESS: Can you -- can you explain
15:10:23 8 what you mean by that?

15:10:24 9 Their policy is you have to strip down to
15:10:26 10 your boxers.

15:10:27 11 BY MR. DAVENPORT:

15:10:27 12 Q. Right.

15:10:27 13 A. Okay.

15:10:28 14 Q. No. I understand what the policy is.
15:10:29 15 I guess what I'm asking is: Are you aware of
15:10:31 16 anyone that you arrested then having a strip search
15:10:34 17 or a body cavity search while at cell block?

15:10:38 18 MS. HUGGINS: Form.

15:10:38 19 THE WITNESS: No to body cavity searches.
15:10:41 20 I didn't know that that was a thing.

15:10:42 21 And then strip search, yeah, everyone we
15:10:45 22 arrest gets stripped down to -- for males, they get
15:10:48 23 stripped down to their boxers.

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15:10:50 1 BY MR. DAVENPORT:

15:10:50 2 Q. Okay. And that's every arrest, for any
15:10:53 3 offense whatsoever?

15:10:54 4 A. That's correct.

15:10:54 5 Q. Okay. How many arrests have you made
15:10:57 6 personally?

15:10:58 7 A. The number's up there, but I don't
15:11:00 8 know.

15:11:00 9 Q. Okay. Would it be more or less than
15:11:03 10 a hundred?

15:11:03 11 A. More.

15:11:04 12 Q. Okay. So for each of those hundred
15:11:08 13 individuals, you have -- you are aware that
15:11:09 14 a strip search was done?

15:11:10 15 A. Yeah, absolutely.

15:11:11 16 Q. Okay. Now, at this time, after
15:11:20 17 Mr. Kistner has been criminally charged according
15:11:22 18 to those criminal complaints, did you ever talk
15:11:24 19 with Mr. Schultz or Ms. McDermott or Ms. Velez
15:11:28 20 about the criminal charges against Mr. Kistner?

15:11:30 21 A. I never knew what was actually charged.

15:11:32 22 Q. Okay. So no further conversations with
15:11:35 23 those individuals about what happened on January 1st?

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15:11:38 1 A. No.
15:11:39 2 MR. DAVENPORT: Okay. All right. I think
15:11:41 3 I'm all set.
15:11:42 4 Do you have any questions?
15:11:43 5 MS. HUGGINS: I have no questions.
15:11:44 6 MR. DAVENPORT: All right. Thank you.
7 (Proceedings of 2/21/20 were then concluded
8 at 3:11 p.m.)

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1 I hereby CERTIFY that I have read the
2 foregoing 293 pages, and that except as to those
3 changes (if any) as set forth in an attached errata
4 sheet, they are a true and accurate transcript of
5 the testimony given by me in the above entitled
6 action on February 21, 2020.

7
8
9 -----
KYLE T. MORIARITY

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1 STATE OF NEW YORK)

2 SS:

3 COUNTY OF ERIE)

4

5 I DO HEREBY CERTIFY as a Notary Public in and
6 for the State of New York, that I did attend and
7 report the foregoing deposition, which was taken
8 down by me in a verbatim manner by means of machine
9 shorthand. Further, that the deposition was then
10 reduced to writing in my presence and under my
11 direction. That the deposition was taken to be
12 used in the foregoing entitled action. That the
13 said deponent, before examination, was duly sworn
14 to testify to the truth, the whole truth and
15 nothing but the truth, relative to said action.

16

17

18

Anne T. Barone

19

ANNE T. BARONE, RPR,
Notary Public.

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